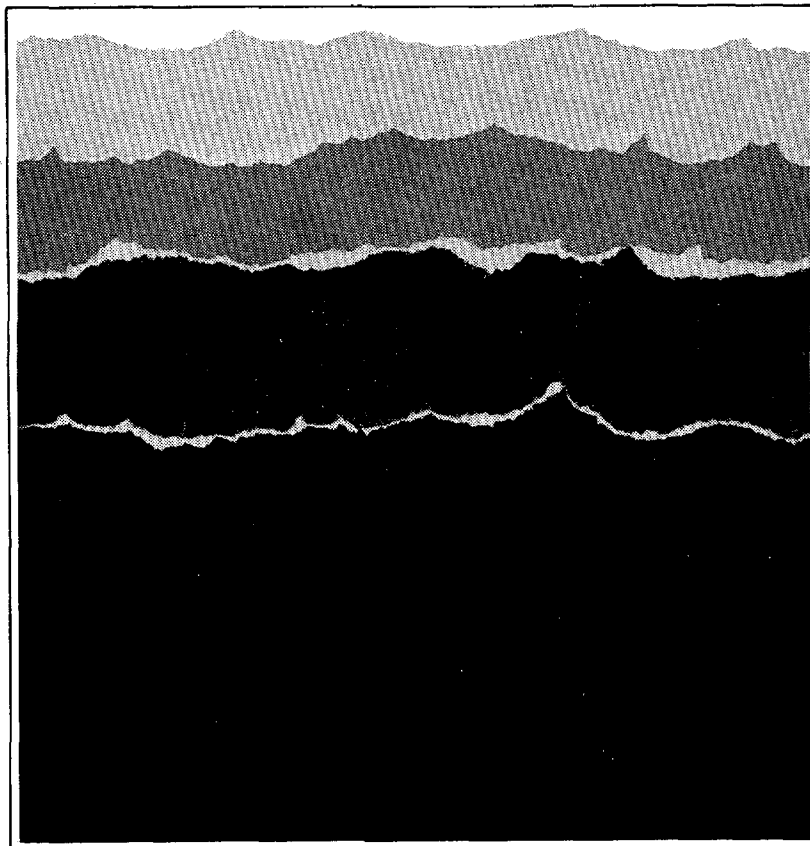


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A Beach Access  
**HANDBOOK**  
for local governments

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Written by Julie Shambaugh,  
Division of Coastal Management.  
Design and Illustrations by  
Jill Miller,  
Division of Coastal Management.

For copies of this handbook contact:  
Division of Coastal Management  
NCDNRCD  
P.O. Box 27687  
Raleigh, N.C. 27611  
Phone: (919)733-2293

A BEACH ACCESS HANDBOOK  
FOR LOCAL GOVERNMENTS

March, 1985

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## INTRODUCTION

North Carolina's vast coastal area has long provided residents and visitors with seemingly unlimited opportunities for commerce, recreation and navigation. The coast's barrier island beaches stretch for more than 300 miles and its estuarine shorelines cover over 4,000 miles along tidal creeks, rivers and sounds. These areas are among the state's greatest natural and recreational treasures and are held in trust by the state for all people to use.

In the past, coastal residents and visitors had little problem getting to the beaches. More recently, however, it has become increasingly difficult to get to the beach as the pace of development has accelerated and more people have come to live and vacation in the coastal area.

Responding to this problem, the General Assembly established a program in 1981 to provide public access to the barrier island beaches. In 1983, the legislature expanded the program to provide access to estuarine shorelines. By creating the Coastal and Estuarine Water Beach Access Program, the General Assembly ensured that all people would continue to be able to get to these valuable recreational resources. (See Appendix A, Coastal and Estuarine Water Beach Access Program and CAMA Program Policies.)

The beach access program is funded by the General Assembly and is administered by the Department of Natural Resources and Community Development through the Division of Coastal Management. Policies and guidelines for the program are adopted by the Coastal Resources Commission and the division is responsible for implementing them. The purpose of the program is to assist local governments in planning, acquiring, designing and constructing public access projects. Strong state and local government partnerships developed through this program have resulted in the inception of a comprehensive system of public access areas throughout the coastal area.

This handbook is designed to assist local governments in the development of public access projects. As this is an initial effort to share information with all local governments in the coastal area, the Division of Coastal Management intends to periodically revise the handbook and add material as the program expands.

Information presented in the handbook has been gained through local government participation in the beach access program over the past four

years. To reinforce the state and local partnerships established by the program, the staff encourages everyone involved with the program to submit information to the Division of Coastal Management. Through this ongoing exchange of ideas, more effective public access projects can be developed to meet the needs of all coastal communities.

#### CONTENTS OF THE HANDBOOK

This handbook has four sections. The first section, Planning for Access, outlines the planning and policy setting process which should occur at the local level. This is an essential step in establishing project funding priorities and identifying and addressing municipal or county access needs. When Coastal and Estuarine Water Beach Access grant funds are available, the Division of Coastal Management gives highest priority to projects which are identified in a locally adopted access plan.

The second section, Project Funding Sources, discusses currently available federal and state funding sources. In addition, more innovative sources are noted. By utilizing diverse funding sources, each of the individual sources may be able to contribute to an increased number of projects.

The third section, Land Acquisition Strategies, reviews diverse techniques which can be used to legally acquire land for public access. These techniques include outright purchase, land donations, subdivision regulations and zoning ordinances. The final section, Accessway Design, reviews recommended access standards. Good access design and construction makes a site attractive, creates a community asset, enables use by the handicapped and elderly and enhances the enjoyment of the beach, sound or river by the public.

## SECTION 1. PLANNING FOR ACCESS

As a free-standing plan or as a component of the Coastal Area Management Act (CAMA) land use plan, planning for public access needs is an essential first step for successful access projects. Specific goals, policies and implementation actions can be established by analyzing factors affecting present access opportunities and considering future demands and funding opportunities. Priority will be given to those access projects identified in a locally approved and adopted access plan when applying for grant funds through the Division of Coastal Management.

### INVENTORY AND ANALYSIS

The first step in developing an access plan is to prepare an inventory of existing access areas and evaluate current use patterns. The following information, and any additional appropriate information, should be collected and mapped to determine the adequacy of present access facilities.

- Access Inventory

- 1) Map all legally existing local, neighborhood and regional public ocean and estuarine water access areas.
- 2) Map all traditional access areas.
- 3) Map all existing private or commercial access facilities.
- 4) Map all ocean or estuarine areas currently identified or considered appropriate for future potential local, neighborhood and regional public access sites.

It is appropriate to verify each area's legal status when mapping the access sites. This ensures that there is no illegal private encroachment and that each area is publicly owned or dedicated and legally open to public use. Finally, it is important that each area is identified by public access signs.

- User Analysis

In order to establish answers to the following questions a survey of access users may be appropriate. Such a survey may include interviews or mailed questionnaires.

- 1) How many residents and visitors, by month or season, are currently using the access sites? Are current access facilities adequate to handle the demand? Are some areas under or over used? Is more access or parking space needed? What other types of problems exist?

- 2) What types of public access facilities are presently provided on ocean and/or estuarine water shorelines? Are there types of access areas or facilities currently unavailable that are needed (estuarine, ocean, regional, neighborhood; piers, swimming, boating, board walks)?
- 3) Given projected residential and seasonal populations, how will the local government provide for their future access needs?

#### POLICIES AND IMPLEMENTATION STRATEGIES

Policies and implementation strategies can be devised as the second step in developing an access plan based on the information collected in Access Inventory and User Analysis. This process is outlined below and can serve as the basis for a local funding guide.

- 1) The following table lists the minimum use standards for access and enhancement areas. Given these standards, how many access areas are needed to provide for existing and future demand?

Boat access areas .....	one-half acre per 1,000 population
Ocean waterfront parks.....	two acres per 1,000 population
Estuarine waterfront parks.....	one acre per 1,000 population
Visual enhancement areas.....	one-half acre per 1,000 population

(Recreation and Park Consultants, Inc., 1979)

- 2) What local policy actions and financial commitments will be made on a continuing basis to ensure that these standards will be implemented?
- 3) What locations are proposed for access development in the current year and for each of the following four years? What types of improvements are proposed and at what estimated cost?

These steps serve as a framework for developing a local access plan. This information can also serve as a basis for public access policy in the CAMA land use plan. By developing a local access plan, the items required for the land use plan will also be explored. The following table illustrates how this information can be used to satisfy the land use planning guidelines. (See Appendix B, CAMA Land Use Plan Requirements.)

<u>CAMA Land Use Plan</u>	<u>Public Access Plan</u>
1) Definition of Issues	1) User Analysis
2) Discussion of Policy Alternatives	2) Policies and Implementation Strategies
3) Choice of Policies	3) Policies and Implementation Strategies
4) Description of Proposed Implementation Methods	4) Policies and Implementation Strategies



Examples of strong and weak statements addressing the required land use plan items are outlined below.

- Definition of Issues

- Strong:
- 1) More attractive public access opportunities in the county will increase potential tourist revenue.
  - 2) The need for relatively free and open access to the ocean and estuarine waters for swimming, fishing, and boating is an important consideration for a coastal county.
- Weak:
- 1) Public access is an issue, so policies will be developed.

- Discussion and Selection of Possible Policy Alternatives

- Strong:
- 1) The town will adopt land use ordinances and subdivision regulations requiring developer dedication and construction of a dune crossover or pier and a minimum of 10 public parking spaces every 1,000 feet.
  - 2) The town will require new development to pay its fair share of the cost of providing adequate public access. Therefore, it will be designated for public access development.
  - 3) The town supports free and open public access and will commit local funds to develop access areas.
- Weak:
- 1) The town will consider pursuing grants and other funding sources.

- Description of Proposed Implementation Methods

- Strong:
- 1) Every year for the next 10 years, the county will develop five neighborhood access sites; the county is committed to providing up to the required local match for any state or federal grant received. If no state or federal funds are available, the county will develop scaled-down projects funded by its cumulative local match.
  - 2) The county will actively support the efforts by the Division of Coastal Management to secure additional regional ocean and estuarine water access areas by allocating staff time to locate suitable properties and design appropriate improvements, and by committing 25 percent or more in matching funds for any State grant received.

- 3) The town will earmark 10 percent of its annual recreation budget for public access projects.

Weak: 1) The county will continue its search to locate an appropriate site for a state-sponsored regional access project.

## SECTION 2. ACCESS FUNDING SOURCES

The purchase of land and materials for the construction of access sites can be funded not only by existing federal and state grant programs but also by drawing on other sources. Federal and state grant programs are extremely competitive. By drawing on an array of funding sources, the local government's chance of actually receiving a grant to construct a new accessway is improved. Public accessways can be constructed as a community-wide endeavor by developing local funding sources and utilizing volunteer labor as well as private contributions and donations. This section reviews available funding sources and programs and cites contacts for further information.

### FEDERAL FUNDING

The Land and Water Conservation Fund administered for the U. S. Department of Interior through the N. C. Department of Natural Resources and Community Development, Division of Parks and Recreation, makes funds available on a 50 percent matching basis to local governments for outdoor recreation planning, acquisition and development activities. Each year grant criteria and the amount of available funds varies. The funds can be used for the acquisition of land and the construction of public recreation facilities including public access facilities. Past projects include regional and neighborhood access facilities at Nags Head, a regional access project at Fort Fisher and the Wilmington waterfront development.

#### Contact:

Jack Frauson, Recreation Consultant  
Division of Parks and Recreation  
N.C. Department of Natural Resources and Community Development  
7225 Wrightsville Avenue  
Wilmington, NC 28403  
Phone: (919) 256-4161

Steve Moler, Recreation Consultant  
Division of Parks and Recreation  
N.C. Department of Natural Resources and Community Development  
1502 N. Market Street  
P.O. Box 1507  
Washington, NC 27889  
Phone: (919) 946-6481

## STATE FUNDING

The Coastal and Estuarine Water Beach Access Program administered by the Division of Coastal Management makes funds available to local governments to acquire land and make public access improvements. The amount of grant funds available varies from year to year. The division has an annual project application and grant contract cycle. Past projects include numerous neighborhood and regional access sites at Kitty Hawk, Kill Devil Hills, Nags Head, West Onslow Beach, Surf City, Wrightsville Beach, Fort Fisher and Long Beach.

### Contact:

Julie Shambaugh, Shorefront Access Coordinator  
Division of Coastal Management  
N.C. Department of Natural Resources and Community Development  
P. O. Box 27687  
Raleigh, NC 27611  
Phone: (919) 733-2293

The Civil Works Program administered by the Office of Water Resources makes funds available to local governments on a matching basis for the following types of water resources development projects: general navigation improvement; recreational navigation improvement; water management (flood control and drainage); stream restoration (clearing and snagging and limited channel excavation); beach protection; and land acquisition and facility development for water-based recreation sites.

### Contact:

John Sutherland  
Office of Water Resources  
N.C. Department of Natural Resources and Community Development  
P. O. Box 27687  
Raleigh, NC 27611  
Phone: (919) 733-4064

The Wildlife Resources Commission has constructed 145 public boat launch areas throughout North Carolina. The commission makes its technical services available to local governments that have secured a site and funding for boat ramp construction. The commission may construct a ramp on public property or on private property with at least a 20-year lease to the commission.

### Contact:

Dick Hamilton  
Wildlife Resources Commission  
N.C. Department of Natural Resources and Community Development  
P. O. Box 27687  
Raleigh, NC 27611  
Phone: (919) 733-3633

## SURPLUS STATE PROPERTY

Real property no longer needed by state agencies is disposed of either by the State Property Office or by the N. C. Department of Transportation. The normal procedures for disposal of surplus state property by the State Property Office (SPO) are set out in G. S. 146-27 through 146-30. In general, these procedures entail a declaration of the property as surplus by the state agency managing the parcel; an appraisal of the property by an appraiser hired by SPO; advertisement for public bids; and selection of the highest bid, approval by the Council of State, and title transfer with the aid of the Attorney General's office. While there is no specific statutory program comparable to the federal program for conveying properties at a discount to other governmental units for specific purposes, G. S. 160A-274 generally authorizes the state to lease or sell real property "with or without consideration" to any other governmental units in the state. In the past, surplus properties which other state agencies and local governments have shown interest in have been conveyed to them by the State Property Office at discounts up to 100 percent.

The N. C. Department of Transportation is responsible for its own property transactions. The disposition of surplus property depends upon the nature of the title: most highway rights-of-way are only easements, and when these parcels are abandoned, the Department of Transportation simply quitclaims all interests it held in the property. Rights-of-way owned in fee simple that are to be abandoned are usually put up for public sale. If other state agencies or local governments are interested in the property, it is possible for them to receive title from the Department of Transportation at discounts up to 100 percent.

### Contact:

N. C. Department of Administration  
State Property Office  
116 W. Jones Street  
Raleigh, NC 27611  
Phone: (919) 733-4346

N. C. Department of Transportation  
Division of Highways  
Right-of-Way Branch  
P. O. Box 25201  
Raleigh, NC 27611  
Phone: (919) 733-7694

## LOCAL FUNDING

Towns and counties have a wide variety of funding options to choose from. Some of these options are described on the following page.

- General Appropriation

On an annual basis a town or county can appropriate a portion of its recreation or public works budget to general beach access development or for the acquisition and construction of specific access projects.

- Parking Meters

The revenues collected from parking meters during the peak tourist season (or throughout the year) are an appropriate source of funds for continued facility development and maintenance. Proceeds from off-street parking facilities may be used for any public purpose, but those from on-street parking must be used for enforcement and administration of traffic and parking ordinances and regulations (G.S. 160A .301(a)).

- Water Fees

A percentage of the revenues collected from water usage (particularly summer water usage as a result of peak seasonal use) could be allocated to the development of access projects.

- Accommodations Tax

A percentage of the revenues collected from an accommodations tax could be directed toward the development of increased public access opportunities. In the coastal area, only New Hanover County, Ocean Isle Beach, Topsail Beach and Surf City have authorization to levee an accommodations tax. In New Hanover County, 80 percent of the revenue must be spent on erosion control and 20 percent on promotion, travel and tourism. Ocean Isle Beach, Topsail Beach, and Surf City have broader authority to spend revenues.

Local citizens and civic groups can also be valuable resources. They may donate materials or funds, volunteer labor, or act as coastal watchdogs to ensure that beach access facilities are properly used. By including such groups in town or county access projects, community involvement, participation and commitment can be strengthened. Retirees, local scout troupes, Kiwanis clubs, school clubs, university groups, garden clubs, clean county groups, local civic and local or national environmental organizations are among the numerous groups which would be interested in such coastal activities. Several local groups include The Neuse River Foundation, Carteret County Crossroads, Onslow County Conservation Group, North Carolina Coastal Federation and the Pamlico-Tar River Foundation.

Local corporations can also be valued supporters of public access. Timber companies, for instance, have had a noted history of land and material donations. Such donations, along with the contribution of funds for access development, strengthens the corporation's support of the community and its citizens.

## NONPROFIT ORGANIZATIONS

The Trust for Public Land (TPL) conserves land as a living resource for present and future generations and works closely with governmental and nonprofit agencies to acquire and preserve open space to serve human needs, share knowledge of nonprofit land acquisition processes, and pioneer methods of land conservation and environmentally sound land use.

Because donations of land to the TPL are tax deductible, individuals or corporations may be able to take advantage of substantial tax benefits. Once the TPL acquires land through purchase or donation, the land is conveyed to a government agency for public open space preservation.

### Contact:

Kathy Blaha  
Trust for Public Land  
219 East Fifth Avenue  
Tallahassee, Fla. 32303  
Phone: (904) 222-9280

The Nature Conservancy is dedicated to identifying, protecting and managing important natural areas throughout the state. The Conservancy identifies land that supports the most significant examples of all components of the natural world. It protects habitat and natural systems, assists or advises government or conservation organizations, and increases public awareness of the need to safeguard natural diversity. It also manages numerous Conservancy-owned preserves in North Carolina.

Land donations to the Conservancy are tax-deductible and therefore individuals or corporations may be able to take advantage of substantial tax benefits. Once the Conservancy acquires land through purchase or donation, the land is often conveyed to a public agency.

### Contact:

Frederick W. Annand, Field Representative  
North Carolina Nature Conservancy  
209 N. Columbia Street  
P.O. Box 805  
Chapel Hill, NC 27514  
Phone: (919) 967-7007

## VOLUNTEER LABOR SOURCES

The Community Service Work Program is administered by the Division of Victim and Justice Services under the Department of Crime Control and Public Safety. Community service is work performed without compensation by an offender for a governmental or nonprofit organization. Individuals convicted of offenses commonly contribute 20 to 200 hours of community service work. Services performed can include office work, construction, clean-up or project design depending on the offender's background and training. Contacts are listed in Appendix C.

## SECTION 3. LAND ACQUISITION STRATEGIES

Continued acquisition of land is necessary if adequate public access to the shoreline is to be maintained. There are generally two approaches to acquiring access: direct acquisition techniques and land use controls which incorporate public access requirements. The strategies presented here can be used by local governments to assist in acquiring waterfront property.

### DIRECT ACQUISITION

- Purchase

The purchase of property at its fair market value is the simplest, most direct means of acquiring land. A disadvantage of direct purchase is that governmental agencies have limited financial resources. A further disadvantage of direct purchase is that the seller's net profit from the sale would be affected if the seller of the property is liable for income tax on the capital gain of the appreciated value of the property. Other purchase options, including bargain sale or installment sale, may benefit the buyer and seller by stretching a land-acquiring agency's funds and reducing immediate tax consequences.

In a bargain sale, the landowner sells the property to a governmental agency at less than fair market value. By doing so, the seller will be able to receive some income from the sale of the land and will be eligible to claim an income tax deduction for a charitable contribution on the difference between the bargain price received and the fair market value of the land. Thus, the amount of the capital gain would be less and so would the accompanying tax on that gain.

In an installment sale, an agreement is made between the landowner and the purchaser whereby the purchaser agrees to pay for the land in annual installments or agrees to acquire a portion of the total property each year with an option to acquire the remaining tracts in future years. By spreading the income gained from the sale of the property over a number of years the seller may be able to spread taxable gains and any associated taxes over an equal number of years.

An easement, or right to use private property in a specific, designated manner, may also be purchased. The purchase of an easement entitles the purchaser to use the property for a specific purpose, such as conservation, passing over the land, or installing a water or sewer line. The ownership of the land remains with the property holder, but the use of



a designated portion of the land for a specific purpose is transferred to the acquiring agency.

Easements are typically purchased when it is not possible to buy the land. Although there is no requirement compelling a landowner to sell an easement, landowners may be interested in the resulting tax benefits. Where easements are sold, a decrease in property tax value would result.

- Donation

The donation of property or an easement involves a landowner deeding the property to a government agency that has agreed to accept it. In a donation, the donor receives no cash for the property although numerous tax benefits are realized. These benefits include real estate, estate, and income tax reductions as well as no capital gains tax that would otherwise result from the sale of the property. If the recipient of the land donation is a governmental agency, the donor can claim an income tax deduction based on the market value of the land as determined by a qualified appraiser. In the instance of an easement, the donor may take the difference in the value of the land after the easement as a charitable deduction. (See Appendix D, Tax Credits for Donated Properties.)

- Prescription

An easement can be established through prescription, the process by which an individual or group obtains the right to use another's property in a specific manner. In this instance, the courts recognize that a prescriptive easement has been established if the following tests are met:

- 1) the use has been open;
- 2) the use is adverse or under a claim of right;
- 3) the use has been continuous and uninterrupted for 20 years;
- 4) there has been actual use of the property by the general public;  
and
- 5) the same path has been used for 20 years.

Currently, North Carolina does not have any case law directly addressing the establishment of a prescriptive easement in a beach access context. It is difficult to establish a prescriptive easement because of the requirement that the use of the property must be adverse. In this case, "adverse" means that the user of the property did not have the owner's permission and, instead, used the pathway in the belief that he had a right to use it. Permissive use, no matter for how long, can never be the basis for a prescriptive easement. A local government may want to consider legal action to establish a public easement where it believes a prescriptive easement for beach access exists across private property.

- Dedication

A dedication begins with an offer to dedicate the use of land. The offer is made by the landowner to the public and must be followed by the local government's acceptance of that offer on behalf of the public. A

dedication made orally or in writing is called an express dedication. A "certificate of dedication" indicates an individual's express intention to dedicate an area to the public.

An implied dedication is based on the property owner's intention to dedicate as indicated by conduct. For instance, the owner's intention to dedicate may be indicated by recognizing the rights of the public in a deed or by the owner's actions with respect to permitting the public to use the land. A 1970 Supreme Court case confirmed the public's right to use two privately owned beaches in California. The court said that when the public has used a beach for a long time without paying attention to the fact that the beach is privately owned, the public acquires a legal right to use that beach. The owner's intent to give the land to the public may be implied from his conduct of not preventing public use of the beach. And the public's acceptance of the dedication may be implied from public use of the beach. Nothing need be written by either side -- the dedication and acceptance is implied by conduct. With respect to beach access, a public access sign at an accessway is one indication by a local government of an express or implied dedication.

Cities and counties may accept dedication offers for the maintenance of roads and pedestrian easements running to and along the beach. Before accepting a dedication offer, it is recommended that a title search or "chain of ownership" survey be conducted to ensure that the offer to dedicate has at no time in the past been withdrawn.

Cities and counties may own, maintain and manage land for recreational purposes including public access parking. Although it is possible for cities to own public streets and roads, counties cannot. It is possible, however, for counties to accept the dedication of certain roads so long as they were dedicated to the public prior to 1975. Although a county may accept such a dedication, a county is not authorized to maintain or improve such roads.

In many local jurisdictions there may be a number of accessways and roads that have been dedicated by the developer but not yet accepted by the county or municipality. These accessways represent opportunities to local governments that should not be neglected. The actions necessary to show acceptance should be given high priority in light of the provision of the state law allowing developers to withdraw unaccepted, unimproved dedications after a period of 15 years (G.S. 136-96).

#### LAND USE CONTROLS

Local governments are able to use the police powers granted to them by the state to protect the public's ownership of and right to use the shoreline to the mean high water mark. As the beach erodes and the mean high water mark moves landward, the boundary between public and private property moves landward. Land use regulations or local ordinances can be used to protect the public's ownership and right to use the shoreline. When erosion or storms destroy structures, local ordinances can require

the property owner to remove, within a given time period, all debris which may endanger public health, safety and welfare. This is particularly important where remnant bulkheads, building foundations, pilings and septic systems would be located below the mean high water mark or on the public beach.

Local governments can also use land use controls to compel developers to provide public beach accessways. Through zoning ordinances and subdivision regulations, developers can be required to dedicate, pay a fee or reserve access areas, as outlined below. (See Appendix E, Model Land Development Regulation.)

- Dedication

State enabling legislation for county subdivision regulations (G.S. 153A-331) provides that such ordinances may require "the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes." The comparable legislation for cities (G.S. 160A-372) is virtually identical. Likewise, the zoning enabling legislation for counties (G.S. 153A-340) and cities (G.S. 160A-381) authorizes local regulations to provide for special use or conditional use permits. The conditions for approval of these permits may include the dedication of utility rights-of-way and of recreational space.

A local unit of government may require the compulsory dedication of land for public recreational use consistent with local subdivision regulations and/or as a condition of a special or conditional use permit. In requiring a developer to dedicate recreational land, the local government should ensure that the location of the access area will adequately provide for the recreational needs of the residents in the development as well as the residents of the immediate neighborhood within the subdivision who might otherwise be precluded from general use of the area.

Definitive standards for the size of such areas and the types of facilities to be installed should be specified in local subdivision ordinances. The regulations should specify why, when, where and how much land will be required as well as criteria pertaining to the type of land that may be offered for dedication. A formula for determining the amount of land a developer must offer should be made explicit. The amount of land to be dedicated should not be based on an arbitrary case-by-case basis. Instead the amount of land to be required for dedication should be related to recognized open space standards and should reflect the density and type of development proposed.

As a condition to a special or conditional use permit, access should be provided for when the permit is issued by the local governing board. At that time, a plat should be prepared and incorporated by reference into the terms and conditions of the permit. The plat should bear a certificate of dedication and both the permit and plat should specify when improvements by the developer will be completed.

State enabling legislation (G.S. 136-102.6) requires that subdivision plats filed since 1975 designate all streets as being public or private. Streets designated as public are presumed to be offers of dedication.

Subdivision ordinances can also require that interior subdivision streets be dedicated to the public. The subdivision enabling statutes for both cities and counties allow local ordinances to provide for "the coordination of streets and highways within a proposed subdivision with the existing or planned streets and highways and with other public facilities." To make use of this authority, the subdivision ordinance should clearly indicate that streets and roads running generally perpendicular to the beach be platted to extend to the mean high tide line.

- Fee

County subdivision regulations provide the developer with the option of paying a fee to the county in lieu of dedicating recreational land (G.S. 153A-331). The developer may be required to pay an amount of money equal to the value of the space required to be dedicated. This money should be placed into a fund specifically designated for the acquisition of access areas. The "fee in lieu" option is not available to municipalities.

- Reservation

An emerging land use tool allows both county and municipal subdivision regulations to require developers to reserve land for recreational purposes and for street and utility rights-of-way or easements (G.S. 153A-331 and G.S. 160A-372). One advantage of such reservations is that they do not impose dedication requirements in instances that may amount to a taking without just compensation, yet they give the local government time to acquire funds to purchase the property. As this is a relatively new tool, its advantages and disadvantages have not been evaluated.

Case law regarding the use of developer exactions to provide beach access is poorly developed, particularly in North Carolina, and the ability of local governments to use these techniques is not firmly established. There are a number of questions regarding the implementation of these measures for access purposes. As there are few court decisions, these standards should be carefully studied before such measures are attempted. A thorough reading and understanding of Dedicating and Reserving Land to Provide Access to North Carolina Beaches (September 1982), by Richard Ducker of the UNC Institute of Government, is highly recommended in addition to contacting and consulting one's local government attorney.

## SECTION 4. ACCESSWAY DESIGN

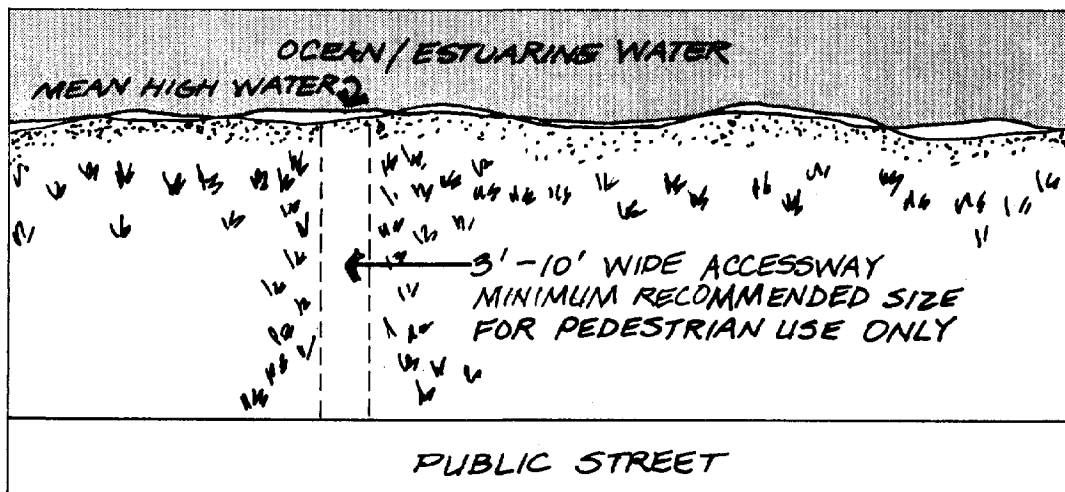
The physical design of an access project and the selection of construction materials can greatly affect the contribution an access area makes to a community. A well-designed access area is easy to use, attractive and will not become a community nuisance. This section suggests standard access plans for local, neighborhood and regional access sites. It also recommends detailed design considerations.

### STANDARD ACCESS PLANS

- Local Access Area

A local access area provides minimal facilities and is designed for the use of pedestrians within a few hundred yards of the project site. This type of access project requires a strip of land from three to 10 feet in width located perpendicular to the beach or shore and extending to a public street or road.

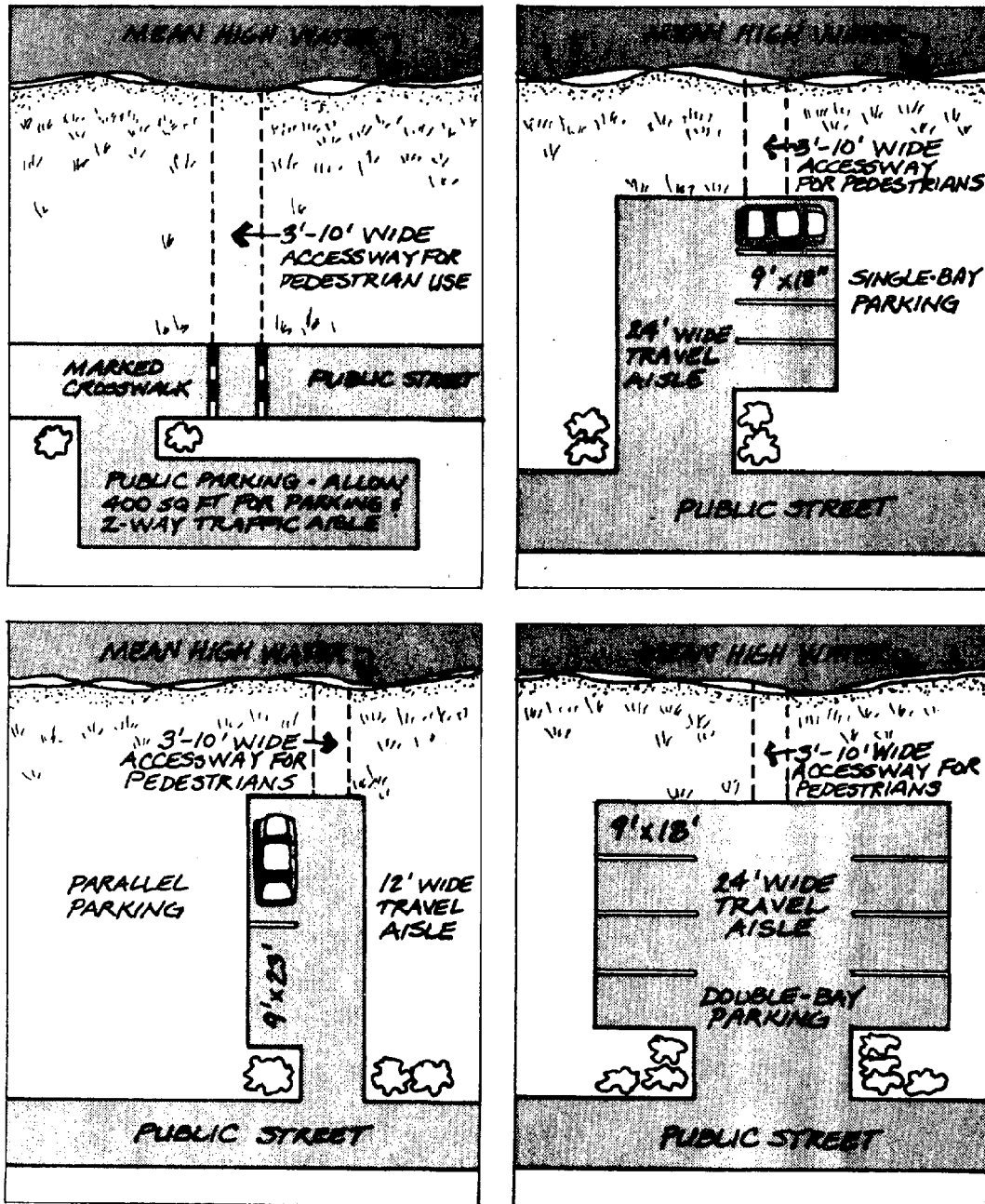
Depending on specific local site conditions, a public access sign, a litter receptacle and a sand or grassed path may be all that is needed to open a local access to the public. Other improvements may include fences to mark public and private property boundaries; a dune crossover or boardwalk; a bike rack and sand fencing where appropriate.



Typical local access areas.

- Neighborhood Access Area

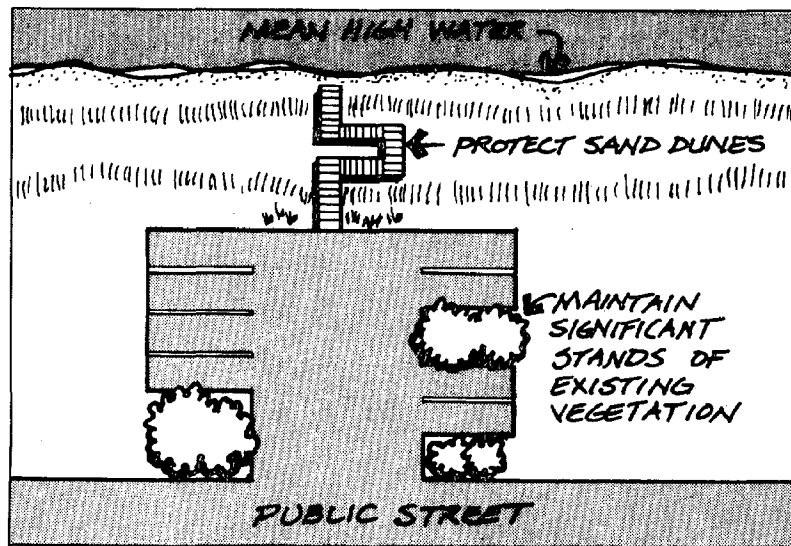
A neighborhood access area provides public parking and pedestrian access to the beach or shoreline. In addition to providing a pedestrian path from a public road to the mean high water mark, a larger area for parking must also be provided. Several design alternatives for this type of access area are presented below.



Typical neighborhood access areas.

The measurements for parking areas are minimum recommended sizes. It is desirable to create access areas large enough to retain and preserve existing natural features in addition to providing public parking. By acquiring larger areas, access can be provided within the context of an undisturbed setting, enhancing the visitor's coastal experience.

Furthermore, the measurements for parking areas assume the site to be nearly flat and do not take into consideration the location of sand dunes, significant stands of vegetation or other features unique to the site. Parking areas and natural features should be integrated as illustrated below.



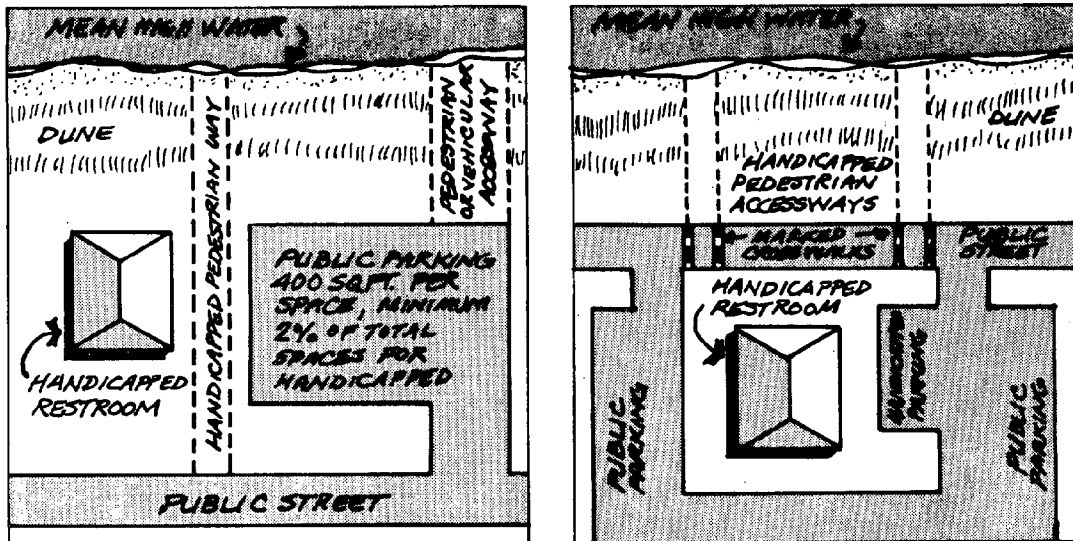
Integrate access areas with natural features.

In addition to parking, neighborhood accessways typically provide dune crossovers accessible to the handicapped, piers, or gazebos; public access signs and litter receptacles; and sand fencing or other fence material to mark public and private property boundaries. Other features which enhance a site include foot showers and showers; bike racks and picnic tables; lighting and landscaping.

- Regional Access Area

A regional access area provides facilities to serve residents of an island or community as well as day visitors. These sites are required to be accessible to the handicapped and provide restrooms, dune crossovers, piers or boat ramps, litter receptacles, public access signs and parking for as many as 60 cars or more. These facilities may also provide foot showers and showers; bike racks and picnic tables; gazebos and seating areas; fencing, lighting and landscaping.

Regional accessways are similar to neighborhood accessways. Sample site designs are illustrated on the following page.



Typical regional access areas.

If located within a designated flood hazard area, restroom construction must comply with Federal Emergency Management Administration regulations. These structures must also be constructed to meet State Building Code standards for accessibility by the handicapped.

Additional considerations are water supply and sewage treatment. Will the water be supplied by a municipal system or a well? Will it be potable? Will sewage be publicly treated or handled by an on-site septic system? Can the necessary permits be acquired? Other details to consider include security, locking or closing the facility after hours and during the off-season, maintenance, and winterizing the plumbing.

#### DESIGN GUIDELINES

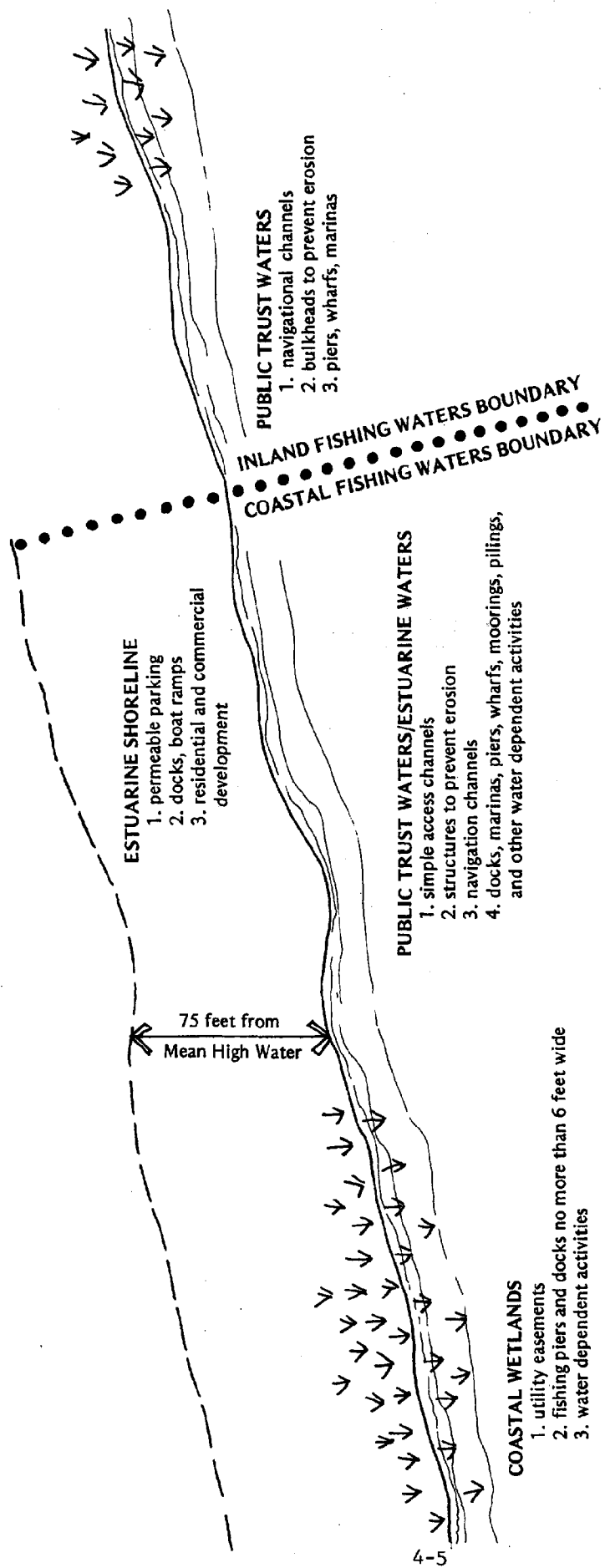
Public access projects are community assets and amenities, attracting tourists as well as residents. Access projects add to the character and identity of coastal communities. Well-constructed projects minimize maintenance and improvement costs and provide long-term use.

Public access projects are generally located in Areas of Environmental Concern (AECs), which are designated by the Coastal Area Management Act (CAMA) for protection. These areas, illustrated on pages 4-5 and 4-6, require special development considerations. Any development proposed within these areas must receive a CAMA permit before construction can begin.

When considering the development of an access project, it may be helpful to contact the nearest Division of Coastal Management Field Consultant. The addresses and phone numbers of the field offices, located in Elizabeth City, Washington, Morehead City and Wilmington, are listed on the inside of the back cover.



# PERMITTED DEVELOPMENT ACTIVITIES WITHIN ESTUARINE AREAS OF ENVIRONMENTAL CONCERN (AEC)



## ESTUARINE SHORELINE AEC:

Non-ocean shorelines are intimately connected to the estuary; they cover an area from the mean high or normal water level landward for a distance of 75 feet.

## COASTAL WETLAND AEC:

Any salt or other marsh subject to regular or occasional flooding by tides, including wind tides but not including hurricane or tropical storm tides.

## ESTUARINE WATER AEC:

The water of the Atlantic Ocean within the boundary of North Carolina and all waters of bays, sounds, rivers and tributaries thereto seaward of the dividing line between coastal and inland fishing waters as set forth in "Boundary Lines, North Carolina Commercial Fishing -- Inland Fishing Waters."

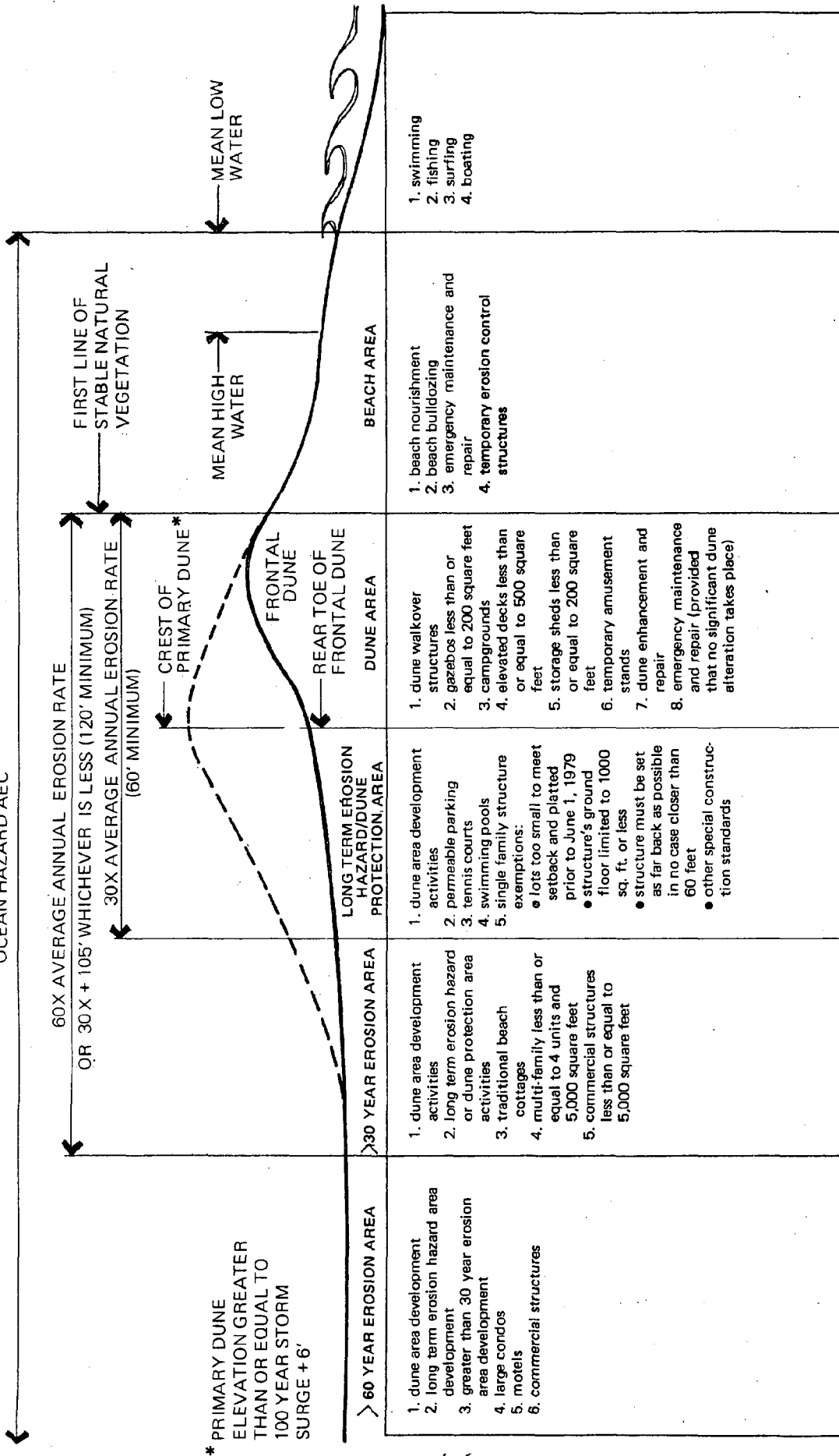
## PUBLIC TRUST AREA AEC:

All waters of the Atlantic Ocean and the land thereunder from the mean high water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides, all navigable natural bodies of water and the lands thereunder to the mean high water level, and generally all artificially created bodies of water.

**NOTE:** All development must meet standards for developmental activities in Estuarine Areas of Environmental Concern listed in Subchapter 7H .0200, .0300 of the North Carolina General Statutes as well as all other applicable federal, state and local permits, certifications, etc.

# PERMITTABLE DEVELOPMENT ACTIVITIES WITHIN OCEAN HAZARD AECs

## OCEAN HAZARD AEC



NOTE: Any development on the oceanfront is risky. The setbacks are only minimum requirements. Risk is reduced by building further back than the minimum required and should be seriously considered by developers. All development must meet standards for developmental activities in Ocean Hazard Areas of Environmental Concern listed in 7H .0300 and all other applicable federal, state and local permits, certifications, etc.

- CRC Regulations for Structural Accessways (Dune Crossovers)

The Coastal Resources Commission (CRC) has adopted standards for managing development activities within Areas of Environmental Concern. Subchapter 7H .0308(c)(2) of these standards requires that structural accessways (dune crossovers) located within the Ocean Hazard Area of Environmental Concern be constructed in a manner which entails negligible alteration on the primary dune. The impact of the crossover on the dune is presumed to be negligible if the requirements below are met.

- 1) The accessway must be exclusively for pedestrian use.
- 2) The accessway must be less than six feet in width.
- 3) The accessway must be raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure can touch the dune only to the extent absolutely necessary, and in no case will an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion.
- 4) Any areas of vegetation that are disturbed must be revegetated as soon as feasible.

In constructing dune crossovers, CRC regulations further stipulate that no significant alteration or removal of primary or frontal dunes or dune vegetation is permissible. It may also be appropriate to construct the last 12 to 16 feet of the dune crossover as a breakaway structure to minimize potential storm damage to the entire structure.

- CRC Regulations for Construction in Estuarine Shoreline AECs

For any project constructed within the 75-foot Estuarine Shoreline Area of Environmental Concern, Subchapter 7H .0209(e) requires that the use standards below be followed.

- 1) All development projects must substantially preserve natural barriers to erosion, such as peat marshland, resistant clay shorelines and cypressgum protective fringe areas along vulnerable shorelines.
- 2) Impervious surfaces must be limited to the amount necessary to use the lot for its intended purpose. These surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can show that an innovative design would provide protection equal to that of the 30 percent limitation.
- 3) All development projects must meet the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:

- a buffer zone along the estuarine shoreline must be provided to retain visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity;

- no development may have finished grades with a slope greater than that which can be maintained by vegetative cover or other adequate erosion control devices or structures; and
  - when land is cleared for any project except a reservoir, a ground cover must be planted within 30 working days of completion of the grading in order to restrain erosion.
- 4) Development cannot have a significant adverse impact on estuarine resources.
  - 5) Development cannot significantly interfere with existing public rights of access to, or use of, navigable waters or public resources.
  - 6) Projects which will require excessive expenditures of public funds for maintenance will not be allowed unless the public benefits of the project will outweigh those expenditures.
  - 7) Development may not cause major damage to valuable documented historic, architectural or archaeological resources.
- CRC Regulations for Construction of Docks and Piers in Estuarine Waters

For the construction of docks and piers in estuarine waters, the development standards in Subchapter 7H .0208(b)(6) require that the guidelines below be met.

- 1) Docks and piers cannot significantly interfere with water flows.
- 2) To protect marsh vegetation from the damaging effects of shading, docks and piers which are built over marshland must be less than six feet wide. Platforms or "T's" at the waterward end of the structure are not restricted to these dimensions, but cannot have a total area of more than 500 square feet.
- 3) Piers must be designed to minimize adverse effects on navigation and public use of waters, while allowing the applicant adequate access to deep waters.
- 4) Pier alignments along federally maintained channels must meet the guidelines of the U. S. Army Corps of Engineers.
- 5) Piers may not be longer than the established length of piers along the same shoreline for similar use. In no case may a pier extend more than one-third of the width of a natural water body or man-made canal or basin.

- 6) Piers cannot interfere with the access to any riparian property and must have a minimum setback of 15 feet between any part of the pier and the adjacent property owner's areas of riparian access. Areas of riparian access are established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point where the upland property line meets the water's edge.

The minimum setback requirement may be waived by the written agreement of the adjacent riparian owner or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier begins, the applicant must obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency before building the pier.

For a diagram illustrating this rule as it applies to various shoreline configurations, contact the Division of Coastal Management.

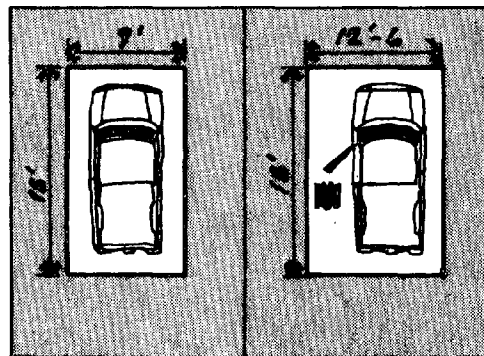
- 7) Docks and piers cannot significantly interfere with shellfish franchises or leases. Anyone applying for a permit to construct a dock or pier must provide notice of the permit application or exemption request to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend.

#### DESIGN DETAILS

The remainder of this section includes detailed design considerations for parking, walks, restrooms, signs, lighting, litter receptacles, bike racks, foot showers, sand fencing and landscaping. The design guidelines described here are minimal in nature. Local governments are urged to incorporate additional measures to enhance public access areas. Professional design assistance is desirable when preparing access projects.

##### • Parking

An average parking space is 9 feet by 18 feet, although 8 feet by 18 feet is appropriate for compact cars. For a parking space to be accessible to the handicapped it must be 12 feet 6 inches by 18 feet to facilitate wheelchair usage. Such parking spaces should be located on hard, paved surfaces as near as possible to the entrance of a facility. State law requires that a minimum of two percent



of all parking spaces be provided for the handicapped although twice that many is preferred. Per G.S. 20-37.6, handicapped parking spaces must be appropriately signed.

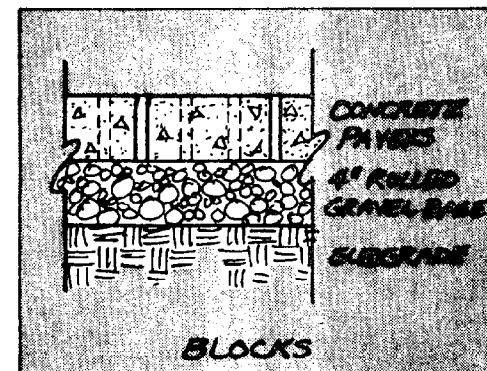
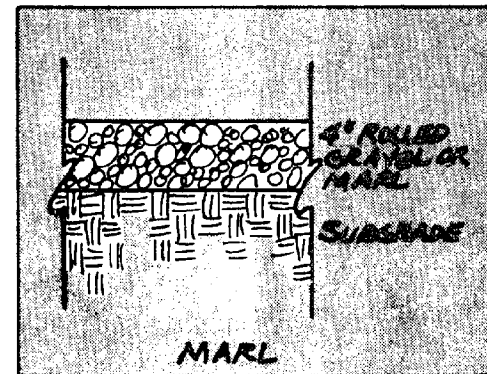
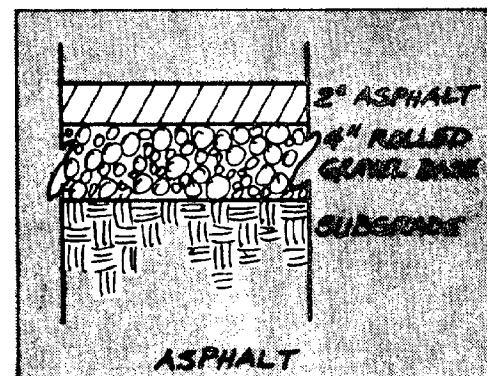
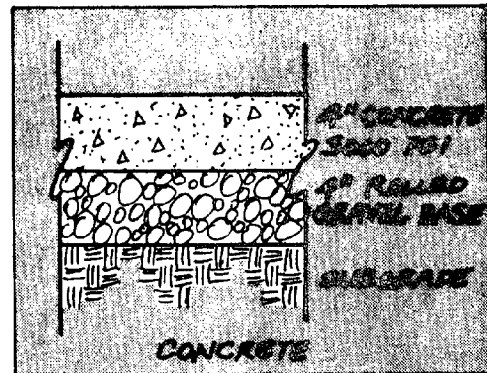
Common materials used for paving parking areas include asphalt, concrete, marl, shell, gravel or paving blocks. Each has advantages and disadvantages as described below:

Concrete provides a rigid, hard surfaced paving. It is an impervious surface which prohibits rainwater from percolating into the soil. Stormwater management must be provided for where concrete paving is used. Concrete requires little maintenance but is one of the most expensive paving materials.

Asphalt provides a hard paved surface at a lower cost than concrete. Like concrete, it is an impervious surface and rainwater runoff must be handled correctly to avoid flooding. Over time, asphalt parking areas must be resurfaced.

Marl, shell or gravel are loose porous paving materials. These surfaces may be dusty and are difficult to roll a wheelchair over. These materials are inexpensive, provide traction for cars and allow rainwater to percolate into the subgrade. Generally, no maintenance is required although periodically new material may need to be added.

Concrete Paving Blocks (Turfstone) are hard surfaced units with regularly spaced perforations across the surface of the paving block. Although hand installation costs are high, this material provides a rigid surface that can be aesthetically pleasing and allows rainwater to percolate through the perforations to the subgrade. Another advantage over other rigid paving



Paving details.

surfaces is that the individual paving blocks can be moved, if necessary, and reused elsewhere.

In general, parking areas should be defined by edges that keep cars out of private property, pedestrian areas, and sand or vegetation. A variety of materials, such as a post-and-rope or wooden fence, railroad ties and concrete curbs or wheel stops, can be used to define the edges of a parking area.

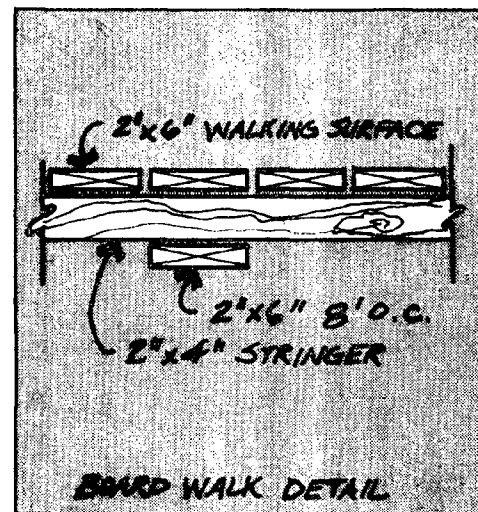
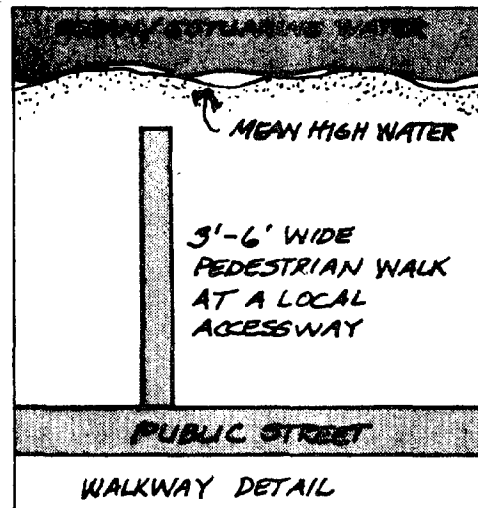
Each parking space should be marked off by painted lines, railroad ties or concrete wheel stops. Painted lines are appropriate on hard surfaces such as concrete or asphalt paving or on open-faced paving blocks. Railroad ties or concrete wheel stops can be used on either porous or non-porous surfaces but are best used on those surfaces such as marl or shell where lines cannot be painted.

- Walks

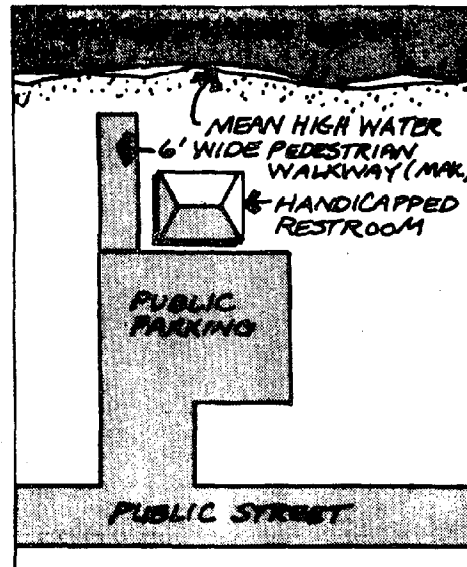
Pedestrian walks should be provided at all access areas. At a local access area, the walk should be provided from the street to the shoreline. At a neighborhood or regional access area, the walk should be provided from the parking area to the shore. In some instances, where pedestrian traffic is low and no fragile vegetation or landforms exist, a walk may not be necessary.

Walks can be constructed of asphalt, concrete or wood. Asphalt and concrete are most appropriately used where a stable sub-base has been installed; wooden walks are appropriate where loose sand is present. Four- to six-foot-wide walks are recommended depending on the intensity of pedestrian use. Boardwalks through flat sandy areas or sparsely vegetated areas are recommended to keep people off fragile natural areas.

Although it may not be possible in every instance, local governments should strive to make as many public access projects as possible available to the handicapped. Local access projects, where parking is not available and a limited number of



individuals are expected to use the sites, may not be the most appropriate projects to construct for use by the handicapped. Neighborhood access projects, where parking and limited facilities are available and a larger number of visitors can be expected, are more appropriate sites to be constructed for use by the handicapped. Regional access projects, where restrooms, showers and parking are available and the greatest number of visitors can be expected, by law, must be constructed for use by the handicapped. At regional access areas it would be appropriate to construct facilities to enable a handicapped individual to use the dry or wet sand beach area or to get to the water.



For a walk or ramp to meet State Building Code requirements for handicapped accessibility, it must meet the standards described below.

- A walk or ramp must be at least four feet wide.
- If the slope of the walk is five percent or less, no handrail is required. If the slope is greater than five percent, a handrail is required on one side. In no instance may the slope exceed 8.33 percent. Where there is a dropoff on one or both sides of a ramp, handrails are required on both sides.
- Handrails must be 32 inches high from the surface of the ramp and shall extend 1 foot beyond the top and bottom of the ramp.
- Where a walk terminates at a door, a 5 feet by 5 feet level area will be provided. The walk must extend at least 1 foot 6 inches beyond the jamb on the pull side of the door.
- A ramp must have at least a 5-foot straight level clearance at the bottom.
- At 30-foot intervals, straight run ramps must have 3-foot minimum long intermediate level platforms for rest and safety purposes. Wherever level platforms turn, the platform will be at least as wide as the ramp and five feet long (deep).

A worthwhile guide to refer to is An Illustrated Handbook of the Handicapped Section of the North Carolina State Building Code, 1977 (reprinted 1982), North Carolina Department of Insurance, Special Office for the Handicapped. Although it illustrates handicapped requirements for urban areas and a variety of physical facilities, it provides valuable and useful design details for public access projects.



- Restroom Facilities

Restroom facilities constructed in an Area of Environmental Concern must be designed and constructed to meet CRC development standards. The structure must also meet State Building Code standards and Federal Emergency Management Administration (FEMA) standards if it is located in a flood hazard area. It may be necessary to elevate the structure one foot above the 100-year floodplain in order to comply with FEMA flood insurance requirements. The structure must also be made accessible to the handicapped in compliance with the State Building Code.

Restroom facilities should be made available for daily public use from Memorial Day to Labor Day at a minimum. Additional weeks and weekends on either side of the traditional summer beach season are also suitable for beach use. A community may wish to make restroom facilities available for such times as well. In general, the public is best served if the facility is available for the longest time period practical.

Communities may choose to locate additional public facilities in the same structure used to house a restroom. By locating headquarters for lifeguard or beach patrol services at restroom facilities, an image of greater public protection is created.

The design and appearance of the structure can create a positive community image as well as minimize maintenance costs, and vandalism or graffiti. When possible, qualified professionals should design and supervise the construction of the structure.

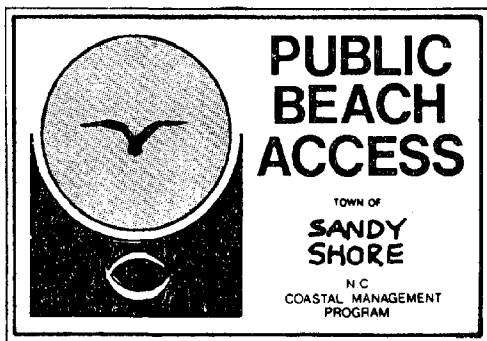
The use of water at the restroom facility and the adequate design of the plumbing system are important considerations in reducing maintenance costs. The suggestions below may be of assistance.

- Provide cold water only -- this reduces shower time.
- Use commercial grade pipes -- heavy-duty fixtures are able to withstand heavy use and abuse.
- Use spring-loaded fixtures -- they help to reduce high water consumption.
- Locate the water cut-off valve near the meter -- turning off the water every night during the beach season will protect against potential vandalism.
- Locate showers in an area that drains well -- this prevents users from the danger of slipping and reduces the risk of water damage to the restroom structure.

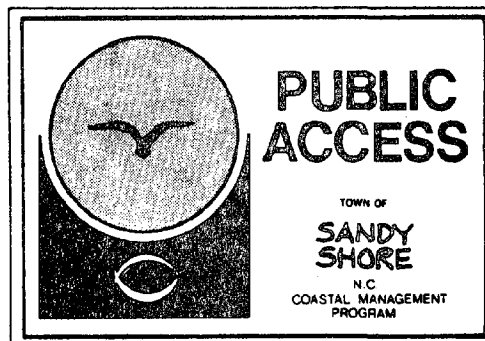
Another design detail to consider is the electrification of the facility. Wiring and electric service will not be necessary in the structure by designing the building for natural solar lighting. Direct and indirect natural light through skylights and windows in the eaves is generally adequate for daytime use.

- Signs

Three types of public access signs are currently available. "Public Beach Access" and "Public Access" signs, illustrated below, should be placed at ocean beaches and estuarine shoreline sites, respectively.



For Ocean Beaches



For Estuarine Shoreline

These signs are available through the Division of Coastal Management or can be ordered directly through the Department of Corrections Sign Shop in Raleigh. The 1985 cost per sign is \$10.

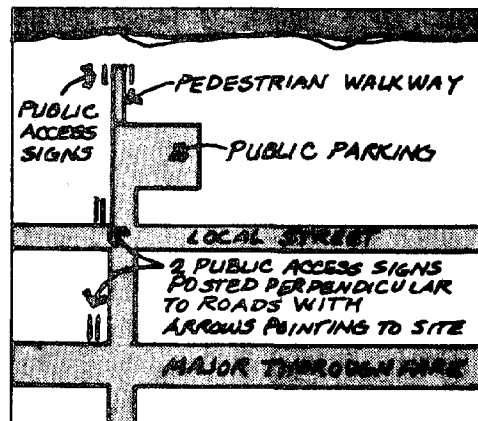
Members of the League of Municipalities contact:

Sue Kirk  
League of Municipalities  
P.O. Box 3069  
Raleigh, North Carolina 27609  
Phone (919) 834-1311

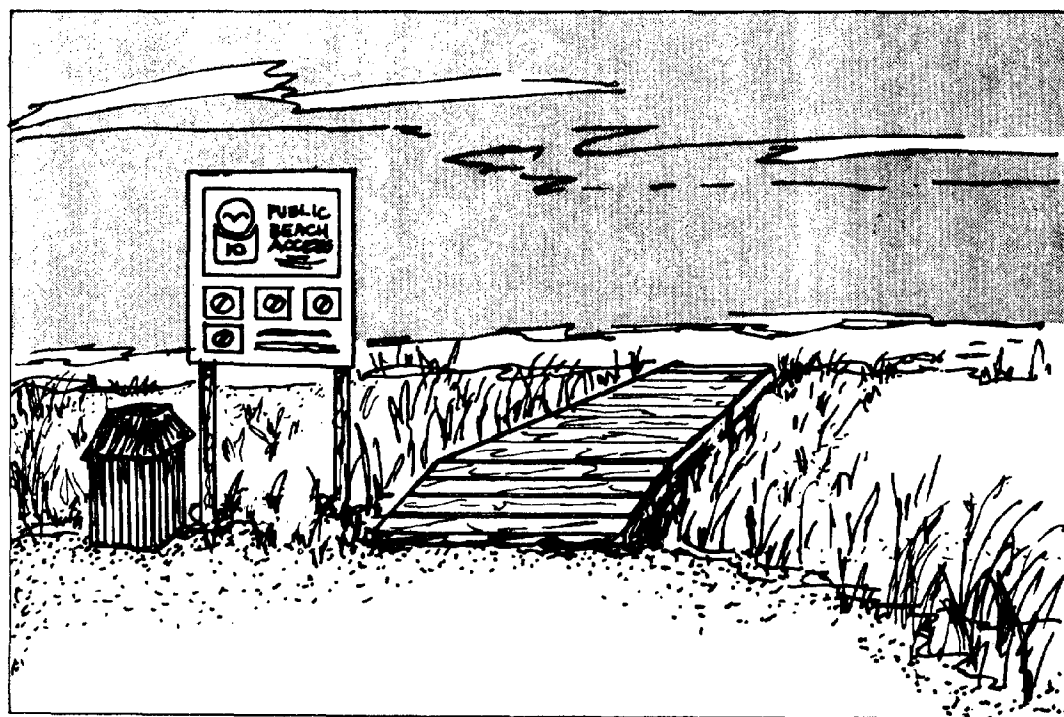
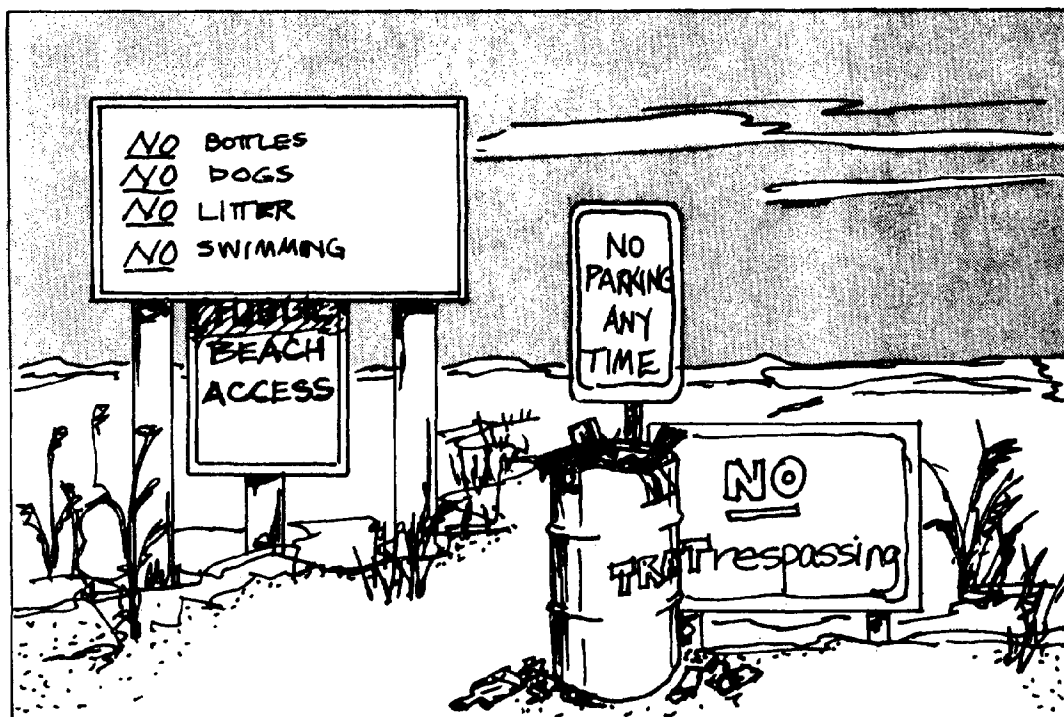
All others contact:

Theodis Strickland  
N. C. Department of Corrections  
1122 Hillsborough Street  
Raleigh, North Carolina 27603  
Phone (919) 733-7254

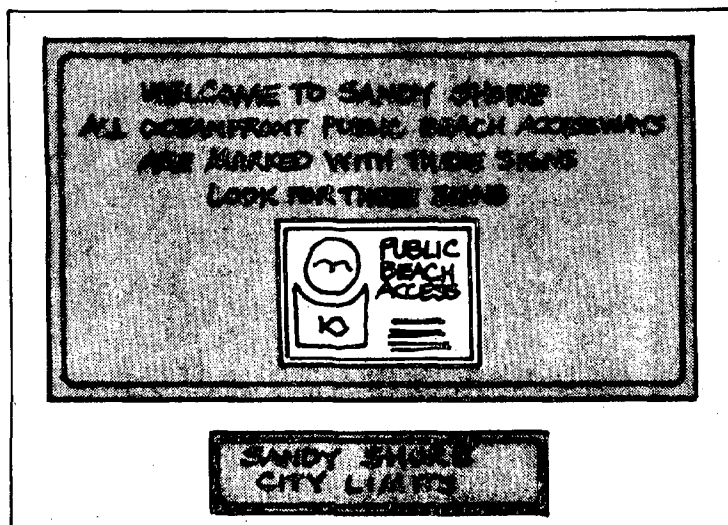
In posting these signs, it is recommended that at least two signs be posted perpendicular to the entrance of each public access area. It may be appropriate to post an additional sign or two on the ocean or sound sides of the site as well as on major thoroughfares to direct traffic to the access site as illustrated.



The placement of public access signs and additional regulatory signs should be coordinated to avoid a cluttered appearance. The use of signs displaying international symbols may simplify this problem as illustrated below:



In addition to the two public access signs, another larger sign (42 inches x 78 inches, green with white lettering) is also available from the sign shop. This sign should be posted at city or county limits. The sign, illustrated below, was priced in 1984 at \$144.20.



Site interpretation and educational signs may also be appropriately used at public access sites. Such signs may discuss the formation of natural land features, vegetation types and their significance, or historical sites and artifacts. The installation of interpretive signs enhances the visitor's experience and increases awareness of the coast's fragile character.

- Lighting, Litter Receptacles, Foot Showers, Bike Racks, Sand Fencing

Although a public accessway can be as simple as a sand path marked with a public access sign, additional features increase the usability of the site. The following features are appropriate at public access sites:

**Lighting.** At a minimum, a safety light should be posted at the end of each neighborhood access area. Additional safety lights should be placed in parking areas for regional access sites and around restroom facilities. Night lighting is a safety feature which facilitates police patrols and allows safe evening use of access sites.

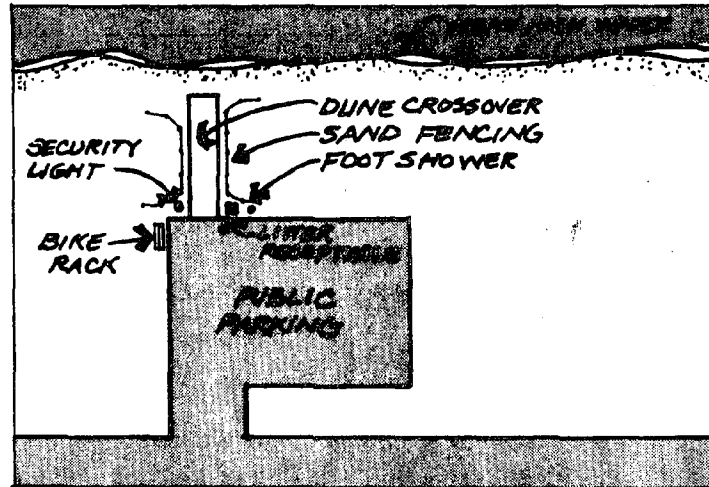
**Litter receptacles.** A minimum of one litter receptacle should be located at each local or neighborhood access facility; two or more at regional facilities. Receptacles should be emptied and maintained

regularly and litter at the access site should also be removed. A community should choose an attractive, well-anchored litter receptacle which best suits its needs.

**Footshowers.** At neighborhood or regional access sites, foot showers are an attractive, relatively inexpensive amenity. As with the restroom facility, appropriate measures should be taken to reduce water usage.

**Bike Racks.** At local, neighborhood and regional access sites bike racks are desirable amenities. They provide a safe place to store bicycles for local and visiting cyclists and provide an incentive to use transportation other than a car.

**Sand Fencing.** Sand fencing should be used at ocean access sites to direct pedestrian movement away from fragile dune areas and toward dune crossovers. Wherever sea oats have been planted, sand fencing should be used to protect the plants from pedestrian traffic.



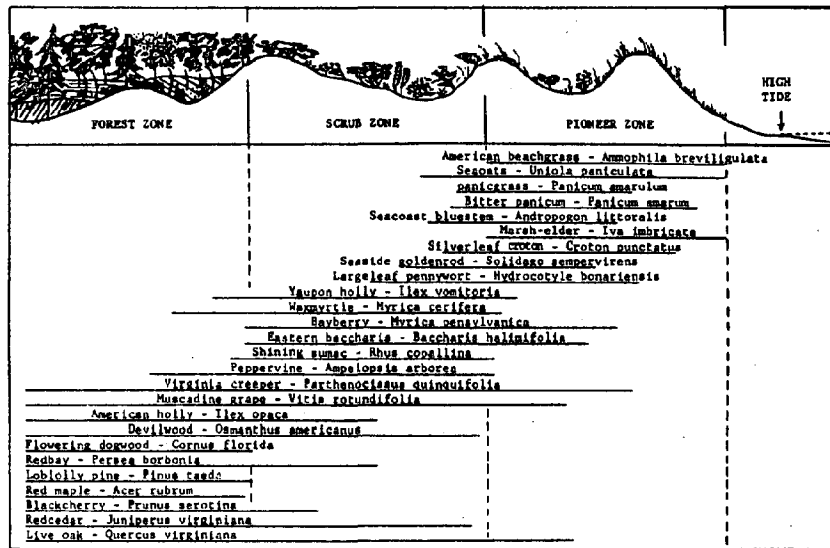
Additional details for access sites.

- Landscaping

Public access areas exposed most directly to salt-laden ocean breezes are extremely difficult sites to introduce landscaping materials. Salt spray retards the growth of even the hardiest plant species. Although one may want a public access site to look like a lush inland park, it may be more prudent to accept the ocean's growth-restricting influences rather than continually replace salt-burned plants.

On barrier islands, plants generally grow in three "zones" (Graetz 1973). The type and size of the vegetation within each zone varies according to the distance from the ocean and each plant's ability to withstand wind and salt spray. The first row of plants, the grass or pioneer zone, receives the most direct exposure to salt spray and winds, and so only the heartiest plants survive here. The middle or scrub zone

is usually located behind the protective frontal dunes. Less salt tolerant plants grow in this zone as compared to the pioneer zone. On some islands there is a third zone where a maritime forest is found. This area is typically located between 300 and 700 feet from the ocean and contains pines and hardwoods. Plants typical of these zones are illustrated below.



(Graetz, 1973)

When a beach access project is constructed, the sudden removal of vegetation in the pioneer or shrub zones will expose less salt tolerant species to the damaging effects of salt spray. Eventually many of these exposed plants may die and denude the site of vegetation. By carefully limiting the removal of existing on-site vegetation, the damaging effects of salt spray can be minimized.

Once an access project is constructed, it is essential that sand dunes and the general area of the site be revegetated with sea oats or other appropriate grasses. If additional plant materials are to be installed, it would be most appropriate to select materials similar to existing ones which would be indicators of salt tolerance and have the greatest likelihood of survival.

APPENDIX A

COASTAL AND ESTUARINE WATER BEACH ACCESS PROGRAM  
AND CAMA PROGRAM POLICIES

## ARTICLE 7A.

### *Coastal and Estuarine Water Beach Access Program.*

#### § 113A-134.1. Legislative findings.

It is determined and declared as a matter of legislative findings that there are many privately owned lots or tracts of land in close proximity to the Atlantic Ocean and the estuarine waters in North Carolina that have been and will be adversely affected by the coastal and estuarine waters hazards such as erosion, flooding and storm damage. The sand dunes on many of these lots provide valuable protective functions for public and private property and serve as an integral part of the beach sand supply system. Placement of permanent substantial structures on these lots will lead to increased risks of loss of life and property, increased public costs, and potential eventual encroachment of structures onto the beach.

The public has traditionally fully enjoyed the State's ocean and estuarine beaches and public access to and use of the beaches. The beaches provide a recreational resource of great importance to North Carolina and its citizens and this makes a significant contribution to the economic well-being of the State. The ocean and estuarine beaches are resources of statewide significance and have been customarily freely used and enjoyed by people throughout the State. Public access to ocean and estuarine beaches in North Carolina is, however, becoming severely limited in some areas. Also, the lack of public parking is increasingly making the use of existing public access difficult or impractical in some areas. Public purposes would be served by providing increased access to ocean and estuarine beaches, public parking facilities, or other related public uses. There is therefore, a pressing need in North Carolina to establish a comprehensive program for the identification, acquisition, improvement and maintenance of public accessways to the ocean and estuarine beaches. (1981, c. 925, s. 1; 1983, c. 757, s. 13.)

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, inserted "and the estuarine waters" following "Atlantic Ocean" and inserted "and estuarine water" following "the

coastal" in the first sentence of the first paragraph and substituted "ocean and estuarine beaches" for "ocean beaches" throughout the second paragraph.

#### § 113A-134.2. Creation of program; administration; purpose.

There is created the Coastal and Estuarine Water Beach Access Program, to be administered by the Coastal Resources Commission and the Department of Natural Resources and Community Development, for the purpose of acquiring, improving and maintaining property along the Atlantic Ocean and estuarine waters, as provided in this Article.

The Coastal Resources Commission and the Department of Natural Resources and Community Development shall use the defi-



inition of "estuarine water" used under Article 7 of this Chapter to administer this program. (1981, c. 925, s. 1; 1983, c. 757, s. 13.)

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, substituted "Coastal and Estuarine Water Beach Access Program" for "Coastal Beach Access Program" and inserted "and estuarine waters" in the first paragraph and added the second paragraph.

### § 113A-134.3. Standards for beach access program.

The Coastal Resources Commission, with the support of the Department of Natural Resources and Community Development, shall establish and carry out a program to assure the acquisition, improvement and maintenance of a system of public access to ocean and estuarine water beaches. This beach access program shall include standards to be adopted by the Commission for the acquisition of property and the use and maintenance of said property. The standards shall be written to assure that land acquisition funds shall only be used to purchase interests in property that will be of benefit to the general public. Priority shall be given to acquisition of lands which, due to adverse effects of coastal and estuarine water natural hazards, such as past and potential erosion, flooding and storm damage, are unsuitable for the placement of permanent structures, including lands for which a permit for improvements has been denied under rules and regulations promulgated pursuant to State law. The program shall be designed to provide and maintain reasonable public access and necessary parking, within the limitations of the resources available, to all areas of the North Carolina coast and estuarine waters where access is compatible with the natural resources involved and where reasonable access is not already available as of June 30, 1981. To the maximum extent possible, this program shall be coordinated with State and local coastal and estuarine water management and recreational programs and carried out in cooperation with local governments. Prior to the purchase of any interests in property, the Secretary of Natural Resources and Community Development or his designee shall make a written finding of the public purpose to be served by the acquisition. Once property is purchased, the Department of Natural Resources and Community Development may allow property, without charge, to be controlled and operated by the county or municipality in which the property is located, subject to an agreement requiring that the local government use and maintain the property for its intended public purpose. These funds may be used to meet matching requirements for federal or other funds. The Department of Natural Resources and Community Development shall make every effort to obtain funds from sources other than the general fund for these purposes. Funds may be used to acquire or develop land for pedestrian access including parking or to make grants to local governments to accomplish the purposes of this Article. All acquisitions or dispositions of property made pursuant to this Article shall be in accordance with the provisions of Chapter 146 of the General Statutes. All grants to local governments pursuant to this Article for land acquisitions shall be made on the condition that the local government agrees to transfer title to any real property acquired with the grant funds to the State if the local government uses the property for a purpose other than beach access. (1981, c. 925, s. 1; 1983, c. 334; c. 757, s. 13.)

**Effect of Amendments.** — The first 1983 amendment, effective May 20, 1983, deleted the former ninth sentence of this section, which read, "These land acquisition funds shall not be used to purchase property held for less than two years by the current owner."

The second 1983 amendment, effective July 1, 1983, inserted "and estuarine water" in the first, fourth, and sixth sentences, inserted "and estuarine waters" in the fifth sentence and added the last sentence.

SUBCHAPTER 7M - GENERAL POLICY GUIDELINES	1.10
FOR THE COASTAL AREA	1.11

SECTION .0100 - PURPOSE AND AUTHORITY	1.13
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.0101 AUTHORITY	1.15
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History Note: Statutory Authority G.S. 113A-102(b);	1.18
113A-107; 113A-124;	1.19
Eff. March 1, 1979;	1.20
Repealed Eff. November 1, 1984.	1.21

.0102 PURPOSE	1.23
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The purpose of these rules is to establish generally applicable	1.25
objectives and policies to be followed in the public and private	1.26
use of land and water areas within the coastal area of North	1.27
Carolina.	

History Note: Statutory Authority G.S. 113A-102(b);	1.30
113A-107; 113A-124;	1.31
Eff. March 1, 1979.	1.32

## SECTION .0200 - SHORELINE EROSION POLICIES 1.39

## .0201 DECLARATION OF GENERAL POLICY 1.41

It is hereby declared that the general welfare and public interest require that development along the ocean and estuarine shorelines be conducted in a manner that avoids loss of life, property and amenities. It is also declared that protection of the recreational use of the shorelines of the state is in the public interest. In order to accomplish these public purposes, the planning of future land uses, reasonable regulations and public expenditures should be created or accomplished in a coordinated manner so as to minimize the likelihood of damage to private and public resources resulting from recognized coastal hazards.

History Note: Statutory Authority G.S. 113A-102(b); 1.52  
 113A-107; 113A-124; 1.53  
 Eff. March 1, 1979. 1.54

## .0202 POLICY STATEMENTS 1.56

(a) Pursuant to Section 5, Article 14 of the North Carolina Constitution, proposals for shoreline erosion control projects shall avoid losses to North Carolina's natural heritage. All means should be taken to identify and develop control measures that will not adversely affect estuarine and marine productivity. The public right to use and enjoy the ocean beaches must be protected. The protected uses include traditional recreational uses (such as walking, swimming, surf-fishing, and sunbathing) as well as commercial fishing and emergency access for beach rescue services. Private property rights to oceanfront properties including the right to protect that property in ways that are consistent with public rights should be protected.

(b) Nonstructural measures designed to minimize the loss of private and public resources to erosion are preferred solutions to erosion problems provided such measures are economically, socially, or environmentally justified. Preferred nonstructural control measures for shoreline erosion shall include but not be limited to AEC regulation, land use planning and land classification, establishment of building setback lines, subdivision regulations and management of vegetation. When structural controls are selected in developing alternative plans for erosion control a clear rationale should be presented and those structural control measures which have the least effect on natural processes should be given prime consideration. [Note: For the purpose of this policy beach nourishment projects are included with traditional structural control measures such as

revetments. The reason for this is that beach nourishment projects are land disturbing activities that can drastically alter the estuary (as a borrow area), the barrier island (through which pipelines will be laid) and the beach and nearshore (through the replacement of aquatic bottoms with dry sand).]

(c) Efforts to permanently stabilize the location of the shoreline by massive seawalls and similar protection devices which do not preserve public trust rights should not be allowed. The attendant environmental damages and public economic costs are unacceptably high. Temporary measure to counteract erosion, such as beach nourishment, sandbag bulkheads, and beach pushing, should be allowed, but only to the extent necessary to protect property for a short period of time until threatened structures may be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary stabilization measures must be compatible with public use and enjoyment of the beach.

(d) The State of North Carolina will encourage innovative institutional programs and scientific research that will provide for effective management of coastal shorelines. Innovative measures which may be developed in the future that will lessen or slow the effects of erosion while minimizing the adverse impacts on the public beach and on nearby properties should be encouraged.

(e) The planning, development, and implementation of erosion control projects will be coordinated with appropriate planning agencies, affected governments and the interested public. Maximum efforts will be made by the state to accommodate the interest of each interested party consistent with the project's objectives. Local, state, and federal government activity in the coastal area should reflect an awareness of the natural dynamics of the ocean front. Government policies should not only address existing erosion problems but should aim toward minimizing future erosion problems. Actions required to deal with erosion problems are very expensive. In addition to the direct costs of erosion abatement measures, many other costs, such as maintenance of projects, disaster relief, and infrastructure repair will be borne by the public sector. Responses to the erosion should be designed to limit these public costs.

(f) The following are required with state involvement (funding or sponsorship) in oceanfront erosion control projects:

- (1) An assessment consistent with the North Carolina Environmental Policy Act (SEPA) shall determine that there will be no unacceptable environmental impacts;
- (2) The entire restored portion of the beach shall be in permanent public ownership;

- (3) It shall be a local government responsibility to provide adequate parking, public access, and services for public recreational use of the restored beach; 2.52 2.53
- (4) State expenditures are to be used only for maintenance of a public beach and not to protect endangered seawall or other erosion abatement structures. 2.55
- (4) The state will promote education of the public on the dynamic nature of the coastal zone and on effective measure to cope with our ever changing shorelines. 2.57

History Note: Statutory Authority G.S. 113A-102(b); 3.3  
113A-107; 113A-124; 3.4  
Eff. March 1, 1979; 3.5  
Amended Eff. March 1, 1985. 3.6

## SECTION .0300 - SHOREFRONT ACCESS POLICIES 3.13

## .0301 DECLARATION OF GENERAL POLICY 3.15

It is the policy of the State of North Carolina to foster, protect, improve and ensure optimum access to recreational opportunities at ocean and estuarine water beach areas consistent with public rights, rights of private property owners and the need to protect natural resources, especially sand dunes and marsh vegetation. The State's ocean and estuarine water beaches are a resource of statewide significance held in trust for the use and enjoyment of all the citizens. The public has traditionally and customarily freely used and had access to these resources and the State has a responsibility to provide continued reasonable access to its beaches and estuarine waters. The State of North Carolina, therefore, has created a Coastal and Estuarine Water Beach Access Program for the purpose of acquiring, improving and maintaining recreational property along the oceanfront and estuarine shoreline.

Many privately owned properties in close proximity to the Atlantic Ocean and to estuarine shorelines have been and will be adversely affected by coastal hazards, making them unsuitable for permanent residences. A public purpose can be served by the acquisition and/or improvement of such properties for beach access use by the general public, provided that such properties are appropriately maintained for this and future generations. The state should acquire the lands which are most vulnerable to severe erosion only when these lands may be used for some valid public purpose, such as beach access and use. The state should seek opportunities for the acquisition of inexpensive properties. Where feasible, donations and bargain acquisitions should be encouraged.

History Note: Statutory Authority G.S. 113A-134.1; 113A-134.3; Eff. March 1, 1979; Amended Eff. March 1, 1985; July 1, 1982.

## .0302 DEFINITIONS 3.42

(a) "Ocean Beach Access" is defined to include the acquisition and/or improvement of properties situated along the Atlantic Ocean for parking and public passage to the oceanfront. Beach access facilities may include, but are not limited to, parking areas, restrooms, showers, picnic areas, dressing/shower rooms, concession stands, gazebos, litter receptacles, water fountains, dune crossovers, interpretive and public beach access signs, and other appropriate facilities.

- (b) "Estuarine Water Beach Access" is defined to include the acquisition and/or improvement of properties located in the twenty county area under CAMA jurisdiction that are situated along estuarine waters as defined by the North Carolina Wildlife Resources Commission and the Division of Marine Fisheries for parking, boating and pedestrian access to estuarine waters. Estuarine water beach access facilities may include, but are not limited to parking areas, restrooms, showers, picnic areas, boat ramps, fishing piers, boardwalks, dressing/shower rooms, concession stands, litter receptacles, interpretive and public beach access signs, gazebos, water fountains, and other appropriate facilities.
- (c) The term "beach" as used in these policies is defined as an area extending from the mean low to the mean high water line and beyond this line to where either the growth of vegetation occurs or a distinct change in slope or elevation occurs, or riparian owners have specifically and legally restricted access above the mean high water line.
- This definition is intended to describe those shorefront areas customarily freely used by the public. The following policies recognize public use right into the beach areas as defined but do not in any way require private property owners to provide public access to the beach.
- (d) Local accessways are defined to include those points which offer minimal facilities if any at all. Generally, these accessways will only have a dune crossover or pier, if needed, and litter receptacles and public beach access signs and are for the use of pedestrians within a few hundred yards of the site.
- (e) Neighborhood accessways are defined as those areas offering parking, usually for five to ten vehicles, a dune crossover or pier, litter receptacles and public beach access signs. Such accessways are primarily for the use of individuals within the immediate subdivision or vicinity of the site.
- (f) Regional accessways are of such size and offer such facilities that they serve individuals, from throughout an island or community including day visitors. These sites are handicapped accessible and normally provide parking for 25 to 60 vehicles, restrooms, a dune crossover, pier, boat ramp, foot showers, litter receptacles and public beach access signs.
- (g) Multi-regional accessways, usually administered by the State, are in the category of state parks, and offer the full complement of improvements associated with such facilities. Although the Coastal and Estuarine Water Beach Access Program will provide funds to the extent possible to improve or coordinate beach access at these sites, multi-regional accessways are seen, in most cases, as being beyond the scope and intent of the state coastal and estuarine water beach access program.

(h) Improvements, as related to beach access, are any facilities which promote access at a specific site. The most common improvements include dune crossovers, piers, boardwalks, litter receptacles, parking areas, restrooms, gazebos, foot showers, boat ramps, and public beach access signs.

(i) Maintenance is the proper upkeep and repair of beach access sites and their facilities in such a manner that public health and safety is ensured. Maintenance is to be a responsibility of the local government unless another suitable party is identified.

History Note: Statutory Authority G.S. 113A-134.3; Eff. March 1, 1979; Amended Eff. March 1, 1985; July 1, 1982.

#### .0303 POLICY STATEMENTS

(a) Development shall not interfere with the public's right of access to the shorefront where established through public acquisition, dedication, or customary use. If such access exists on a site where a development requiring CAMA approval is to occur, access provisions including parking and satisfying local requirements must be specified in the permit.

(b) Public beach nourishment projects funded by the state and federal government will not receive initial or additional funds unless provisions are made for adequate public access. This must include access rights, adequate identification and parking.

(c) Policies regarding state and federal properties with shorefront areas intended to be used by the public must encourage, permit and provide public access and adequate parking so as to achieve maximum public use and benefit of these areas consistent with established legislation.

(d) State and federal funds for beach access shall be provided only to localities that also provide protection of the frontal dunes and marsh and estuarine vegetation.

(e) The State should continue in its efforts to supplement and improve highway, bridge and ferry access to and within the 20 county coastal area consistent with the approved local land use plans. Further, the State should wherever practical work to add public fishing catwalks to appropriate highway bridges and should incorporate catwalks in all plans for new construction and for remodeling bridges. It is the policy of the State to seek repeal of ordinances preventing fishing from bridges except where public safety would be compromised. Where bridges are to be replaced, the acquisition of public access at the old bridge site should be obtained. Department of Transportation efforts regarding right-of-way alterations within the twenty coastal counties should be



coordinated with the Coastal Resources Commission to preserve and enhance public access opportunities.

(f) All land use plans and state actions to provide additional shorefront access shall recognize the need of providing access to all socio-economic groups.

(g) The commission shall encourage as much beach access as is practical for the entire coast, based on estimated needs, with the recognition that the most appropriate type of access will vary from locality to locality.

(h) An overall goal of the Coastal and Estuarine Water Beach Access Program is to develop at least one regional accessway for each town or county having oceanfront shoreline or one per ten miles, whichever is greater, and one regional accessway for each town or county having estuarine water shoreline or one per ten miles, whichever is greater.

(i) Local governments are encouraged to participate in the access program to the maximum extent possible so that a shared state-local partnership will maximize the benefits to the community and to all citizens. The ocean and estuarine water beaches are recognized as a resource of state and local significance: all local governments are encouraged to actively participate in the access program to provide access facilities to accommodate state and local needs.

(j) Beach access projects shall, to the maximum extent feasible, be consistent with the established priorities of approved local land use plans, beach access plans and outdoor recreation plans, and will be designed to be free of architectural barriers which may limit their use by the handicapped. Where grant funds are used to acquire land or improve access opportunities, local governments may not charge a user fee unless such proceeds are used exclusively for beach access maintenance and improvements.

(k) Local governments shall have lead responsibility for the provision of local and neighborhood access with full support and assistance from the State. Provision of local and neighborhood access should be based on identified needs as stated in approved local land use plans, beach access plans or outdoor recreation plans. The State shall have lead responsibility for the provision of regional accesses. Provision of regional access should be based on identified needs as stated in approved local land use plans, beach access plans, outdoor recreation plans, or as opportunities present themselves.

(l) Although the commission recognizes the value of multi-regional accessways, it recognizes that the large costs associated with such projects will exceed the scope of the existing beach access funds. However, the beach access program shall be fully coordinated with such projects and shall, to the

extent feasible, support access projects within new or existing federal, state, or local properties. 5.37

(m) Local governments are encouraged to pursue the legal perfection, surveying and/or signing of all accessways currently on record, be they dedicated or established by customary use, to ensure that none are lost to development or encroachment. 5.38 5.39 5.40

(n) The estuarine access program is primarily for access to estuarine water beaches; while access to estuarine waters for boating may be associated with this, it is not a primary objective. 5.42 5.43

History Note: Statutory Authority G.S. 113A-134.3; 5.46

Eff. March 1, 1979; 5.47

Amended Eff. March 1, 1985; July 1, 1982. 5.48

#### .0304 LOCAL PARTICIPATION REQUIREMENTS: BEACH ACCESS PROGRAM 5.50

(a) Aspects of local accessway management may be considered of such overriding state concern that all or any combination of the following conditions may be imposed on any grant for the purpose of acquisition of property or improvements to such property as follows: 5.53 5.54 5.55

- (1) verification of coastal and estuarine water beach access inventories prepared for the locality by the department and acceptance of all dedicated street ends and accessways providing access to ocean and estuarine shorelines; reference to the actual dimensions of each publicly dedicated right-of-way should also be made; 6.1 6.2 6.3 6.4
- (2) erection, replacement and maintenance of public beach access signs approved by the department; 6.6
- (3) adoption of appropriate subdivision ordinances requiring physical and visual access for the general public to the shorefront along existing and future public streets and in subdivisions where no public streets are constructed; 6.7 6.8 6.9
- (4) maintenance responsibility for accessways under local jurisdiction; 6.10 6.11
- (5) identification of properties unsuitable for development due to coastal hazards and acquisition and site development strategies; 6.12 6.13
- (6) all properties acquired under the beach access program be used and maintained for public access to the shorefront; 6.14 6.15
- (7) in order to ensure the timely completion of approved projects, time limitations may be imposed on the acquisition or improvement of appropriate properties; 6.16 6.17 6.18
- (8) a written explanation, where appropriate, as to why a local government chooses not to request funds for the 6.19 6.20

improvement or acquisition of properties unsuitable for residential or commercial development or why a local government has not prepared public access policies or plans, or applied for grant assistance; and	5.21
(9) development of a local access plan or adoption of an access resolution; an access plan would identify existing access opportunities, problems and needs; establish a means for determining access requirements, establish standards and goals; specify implementation strategies; establish project priorities; examine funding alternatives; and develop appropriate local policies.	6.22
(b) The local government has primary responsibility for identifying a comprehensive public access plan. The local government has primary responsibility for selecting parcels for public acquisition and/or improvement for beach access and for endorsing beach access grant applications. The Office of Coastal Management has primary responsibility for administering and developing the coastal and estuarine water access program and secondary responsibility to provide appropriate technical assistance to local governments.	6.24
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History Note: Statutory Authority G.S. 113A-134.3;	5.28
Eff. July 1, 1982;	5.29
Amended Eff. March 1, 1985.	6.30
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.0305 MANDATORY PUBLIC NOTICE	6.35
Prior to any grant award by the State under the Coastal Beach Access program, the project sponsoring agency will conduct a public meeting allowing discussion on the placement and maintenance of any beach access facility or the acquisition of any suitable property for beach access.	6.36
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History Note: Statutory Authority G.S. 113A-134.3;	6.39
Eff. July 1, 1982.	6.41
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APPENDIX B

CAMA LAND USE PLAN REQUIREMENTS

## SUBCHAPTER 7B - LAND USE PLANNING GUIDELINES 1.10

## SECTION .0100 - INTRODUCTION TO LAND USE PLANNING 1.12

## .0101 INTRODUCTION 1.14

(a) The Coastal Area Management Act of 1974 establishes a cooperative program of coastal area management between local governments and the state. Land use planning lies at the center of local government's involvement, as it gives the local leaders an opportunity and responsibility to establish and enforce policies to guide the development of their community. 1.16  
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(b) The purpose of these state guidelines is to assist local governments in each of the 20 coastal counties with the preparation of their own individual land use plans. Each county and the municipalities within the coastal counties are encouraged to develop a plan which reflects the desires, needs and best judgment of its citizens. The land use plans when approved by the Coastal Resources Commission become a part of the North Carolina Coastal Management Plan for the protection, preservation, orderly development and management of the coastal area of North Carolina which is the primary objective of the Coastal Area Management Act of 1974. 1.20  
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(c) This Subchapter also is intended to set forth general standards for use by the commission in reviewing and considering local land use plans. These standards of review are intended to clarify the requirements of certain portions of the "State Guidelines for Local Planning" and are intended to set forth a basic format for the plans. These standards of review will be considered by the commission in determining whether to approve or disapprove local land use plans. The commission, in its review, will also take into account all other considerations regarding submission dates, content, and similar matters as outlined in this Subchapter. 1.29  
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History Note: Statutory Authority G.S. 113A-110; 1.36  
Eff. February 1, 1976; 1.37  
Amended Eff. November 1, 1984; July 1, 1984; 1.38  
September 1, 1979. 1.39

## .0102 OBJECTIVES 1.41

## .0103 POLICIES 1.42

## .0104 STANDARDS 1.43

History Note: Statutory Authority G.S. 113A-107(a); 1.46  
Eff. February 1, 1976; 1.47

## SECTION .0200 - LAND USE PLAN

1.56

## .0201 INTRODUCTION

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(a) Land development generally takes place as the result of a series of decisions by private individuals and government. If left entirely to chance, the resulting pattern of development in a locality may well not be in the best overall community interest. In order to promote this community interest for both present and future generations, a land use plan is to be developed, adopted and kept current by the local governments in the coastal area.

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(b) The land use plan is a framework that will guide local leaders as they make decisions affecting development. Private individuals and other levels of government will also use the plan to guide their land use decisions. Use of the plan by these groups will lead to the more efficient and economical provision of public services, the protection of natural resources, sound economic development, and the protection of public health and safety.

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(c) Local governments, through the land use planning process, address issues and adopt policies that guide the development of their community. Many decisions affecting development are made by other levels of government, and local policies must take account of and coincide with established state and federal policies. Most decisions, however, are primarily of local concern. By carefully and explicitly addressing these issues, other levels of government will follow local policies that deal with these issues. State and federal agencies will use the local land use plans and policies in making project consistency, funding and permit decisions. Policies which consider the type of development to be encouraged, the density and patterns of development, and the methods of providing beach access are examples of these local policy decisions.

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(d) The land use plan shall contain the following basic elements:

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(1) a summary of data collection and analysis,

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(2) an existing land use map,

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(3) policy discussion,

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(4) a land classification map.

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These four elements represent a minimum level of planning necessary to fulfill the objectives of the Coastal Area Management Act. Counties and municipalities are encouraged to use these minimum guidelines as a foundation from which to establish a more comprehensive planning and management process. The land use plan itself should be a simple, clear plan. The format and organization of the plan should enable users to find

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needed items quickly and easily. Each local government should ensure that its land use plan meets the substantive requirements of this Section, and still is not unnecessarily bulky, wordy, etc. 2.35

History Note: Statutory Authority G.S. 113A-107(a); 2.38  
 Eff. February 1, 1976; 2.39  
 Amended Eff. July 1, 1984; September 1, 1979. 2.40

#### .0202 DATA COLLECTION AND ANALYSIS 2.42

##### (a) Establishment of Information Base. 2.43

- (1) The data collection and analysis items detailed in this Rule are designed to establish the information base necessary to make policy choices about future land use and development in the community. They have been formulated so as not to place unnecessary burden on the local planning resources. The requirements can generally be fulfilled by utilizing existing local plans and studies as well as information provided by regional planning bodies and state agencies. Those counties and municipalities desiring to be more detailed or comprehensive than these guidelines suggest are encouraged to do so. 2.45  
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- (2) The process suggested by the data collection and analysis requirements of this Rule begins with an examination of the present situation. An estimate is then made of what land use demands are likely to be placed on the planning area during the ensuing, not to exceed, 10 year period, based upon population and economic projections and upon local policies. The implications of the projected future demands are then examined and balanced against the suitability of the lands within the local government's jurisdiction for development and the capability of government to provide basic public services and facilities. Each local government should analyze how anticipated development will affect the need for services such as water, sewer, fire and police protection, schools, etc. Particular attention should be paid to situations where local government does not provide water or sewer and these services are provided privately. In the absence of public systems, potable water availability and soils suitability for sewage disposal etc. must be considered. This analysis should be linked closely with policy development and land classification in each plan. 2.52  
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- (3) The summary of the data collection and analysis prepared as part of the land use plan shall indicate the manner in which the data was assembled and analyzed along with a statement of the major conclusions. This summary shall also provide an index showing where more detailed information can be found in technical appendices to the plan.
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- (b) Present Conditions.
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  - (1) Present Population and Economy. A brief analysis of the local population and economy shall be made utilizing existing information. Particular attention should be given to the impact of seasonal populations and to economic activities which affect coastal land and water resources.
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  - (2) Existing Land Use. Existing land use shall be mapped and analyzed, with particular attention given to:
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    - (A) significant land use compatibility problems; 3.19
    - (B) major problems that have resulted from unplanned development, and that have implications for future land use; 3.21
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    - (C) an identification of areas experiencing or likely to experience changes in predominant land uses; 3.23
    - 3.24
    - (D) during plan development local governments are encouraged to use small scale, high detail maps. These maps should be retained for local government use. Maps included in the land use plans should be of an appropriate scale and quality to be easily interpreted and should contain a synthesis of data gathered during plan development. 3.26
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    - 3.28
  - (3) Current Plans, Policies and Regulations. This element shall contain:
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    - 3.31
    - (A) a listing and summary of existing plans and policies having significant implications for land use, including at least transportation plans, community facilities plans, utilities extension policies, open space and recreation policies, and prior land use plans and policies. This listing and summary shall distinguish between studies and other background documents and plans, ordinances and policies which have been adopted and are currently being used and followed. This should also include statements as to whether the local government intends to participate in programs such as the National Flood Insurance Program, etc.;
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    - (B) a listing and brief description of the means for enforcement of all existing local land use regulations; the following regulations shall be
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discussed, where applicable: zoning, subdivision,	3.42
floodway, building, septic tank, historic	3.43
district, nuisance, dune protection,	
sedimentation, and environmental impact	
ordinances, codes or regulations;	3.44
(C) a listing and summary of relevant state and	3.45
federal regulations affecting coastal land and	3.46
water resources (to be provided by the Department	3.47
of Natural Resources and Community Development.)	3.48
(c) Constraints; Land Suitability. An analysis shall be made	3.50
of the general suitability of the undeveloped lands as identified	3.51
on the existing land use map within the planning area for	3.52
development, with consideration given to the following factors:	3.53
physical limitations for development, fragile areas, and areas	
with resource potential. These factors shall be analyzed, and	3.54
where possible mapped, based upon the best information available.	3.55
The major purpose of this analysis is to assist in preparing the	3.56
land classification map.	
(1) Physical Limitations for Development. An	3.57
identification shall be made of areas likely to have	4.1
conditions making development costly or causing	
undesirable consequences if developed. The following	4.2
areas shall be identified:	
(A) hazard areas, including man-made hazards (for	4.4
example, airports, tank farms for the storage of	4.5
flammable liquids, nuclear power plants) and	
natural hazards (for example, ocean erodible	4.6
areas, and flood hazard areas); this	4.7
identification shall include the specific sources	
of the data such as flood insurance maps, county	
soils maps, etc.;	
(B) areas with soil limitations, including the	4.8
following:	4.9
(i) areas presenting hazards for foundations;	4.11
(ii) shallow soils;	4.12
(iii) poorly drained soils;	4.13
(iv) areas with limitations for septic tanks	4.15
including both areas that are generally	4.16
characterized by soil limitations, but within	
which small pockets of favorable soils do	4.17
exist; and areas where soil limitations are	
common to most of the soils present;	4.18
(C) sources and estimated quantity and quality of	4.21
water supply, including:	
(i) groundwater recharge areas (bedrock and	4.23
surficial),	4.24
(ii) public water supply watershed,	4.26

(iii) wellfields;	4.27
(d) areas where the predominant slope exceeds 12 percent.	4.30
(2) Fragile Areas. An identification shall be made of those areas which could easily be damaged or destroyed by inappropriate or poorly planned development. The following shall be considered (as defined in 15 NCAC 7H): coastal wetlands; sand dunes along the outer banks; ocean beaches and shorelines; estuarine waters and estuarine shorelines; public trust waters; complex natural areas; areas that sustain remnant species; areas containing unique geologic formations; registered natural landmarks; and others such as wooded swamps, prime wildlife habitats, scenic and prominent high points, archeologic and historic sites; etc. Special emphasis should be given to other fragile areas which are not offered protection by existing regulations.	4.32 4.33 4.34 4.35 4.36 4.37 4.38
(3) Areas with resource potential, including: productive and unique agricultural lands; potentially valuable mineral sites; publicly owned forests, parks, fish and gamelands, and other non-intensive outdoor recreation lands; privately owned wildlife sanctuaries. Prime farmland shall be identified consistent with the Governor's Executive Order Number 96 promoting interagency coordination toward prime farmland preservation.	4.39 4.40 4.41 4.42 4.43 4.44
(d) Constraints; Capacity of Community Facilities. An identification shall be made of:	4.46
(1) existing water and sewer service areas;	4.47
(2) the design capacity of the existing water treatment plant, sewage treatment plant, schools, and primary roads;	4.48 4.50 4.51
(3) the level (as a percentage) at which the existing water treatment plant, sewage treatment plant, schools, and primary roads are currently utilized;	4.53
(4) the capacity of community facilities to supply existing and anticipated demand. Counties containing barrier islands and municipalities therein shall use the peak seasonal population as a basis for public facility planning and policy development.	4.55 4.56
(e) Estimated Demand:	5.1
(1) Population and Economy. A population estimate for the upcoming 10 years shall be made and used as the basis for determining land and facilities demand and for classifying land areas. Ten year population projections will be provided by the Department of Administration for use in making population estimates.	5.3 5.4 5.5 5.6

- Projections will be provided for counties and those cities and towns having a population greater than 2,500. Accurate projections for those areas with a population of less than 2,500 are not available and must be developed by the local planning unit. The projections provided by the Department of Administration are based on prior trends with annual updates. The local government may wish to use these trend projections as its population estimates or to modify them to include additional factors such as:
- (A) seasonal population. Counties containing barrier islands and municipalities therein shall use peak seasonal population as a basis for public facility planning and policy development.
  - (B) local objectives concerning growth. To meet the intent of this item local governments shall consider local plans and policies concerning growth as identified in Rules .0202(b) (3) and .0203 of this Section.
  - (C) foreseeable social and economic change.
- The Department of Administration population model is capable of taking into account some of these considerations and should be used where possible when such further refinement is desired. If such refinement causes a significant difference between the Department of Administration population projections and the local population estimate, the community shall explain the reason for the difference. The Coastal Resources Commission must approve such an estimate.
- (2) Future Land Need. To estimate the need for land for residential structures and related services, the population predictions must be examined in relation to present and future types of land development. The estimated population increase should be distributed at density levels which have been stated in the policies described in .0203 of this Section and in line with the land classification system outlined in .0204 of this Section. These policies shall consider both past development densities and patterns and the desired future density and type of development.
  - (3) Community Facilities Demand. Consideration shall be given to new facilities which will be required by the estimated population growth and the densities at which the land is to be developed.

History Note: Statutory Authority G.S. 113A-107(a);  
Eff. February 1, 1976;

Amended Eff. July 1, 1984; September 1, 1979. 5.43

.0203 POLICY STATEMENTS 5.45

(a) The plan shall contain statements of local policy on those 5.47  
land use issues which will affect the community during the 10 5.48  
year planning period. The issues shall include but not be 5.49  
limited to: resource protection, resource production and  
management, economic and community development, continued public 5.50  
participation and storm hazard mitigation. Local governments 5.51  
should ensure to the greatest extent possible that there is 5.52  
consistency among individual policies developed in each policy  
category. Particular attention should be given to individual 5.53  
policies in the resources protection, resources production and  
economic and community development categories. For example, a 5.54  
resource protection policy to "protect water quality in surface  
waters" should be reflected in economic and community development 5.55  
policies which would also affect surface water quality.

(1) Resource Protection: 5.56

(A) Local governments shall discuss each of the areas 6.1  
of environmental concern located within its 6.2  
jurisdiction and list the types of land uses which  
it feels are appropriate in each type of area and 6.3  
the reasons for including each land use type. In 6.4  
the same manner, the physical constraints to  
development which exist within the planning  
jurisdiction shall be analyzed [as set forth in 6.5  
.0202(c) of this Section]. Compatible uses for 6.6  
areas with cultural and historic value should also  
be described. Such questions as the following 6.7  
should be addressed: "What will be the benefits  
which will accrue to the local government for 6.8  
encouraging development or preservation of these  
areas?" "What local, state, or federal protection 6.9  
is needed for these areas?"

(B) As a minimum, the plan shall contain policy 6.10  
statements on the following resource protection 6.11  
issues (if relevant):

- (i) constraints to development (e.g., soils, 6.13  
flood prone areas); to include an explicit 6.14  
discussion of soil suitability/septic tank  
use;
- (ii) specific local resource development issues 6.15  
relative to areas of environmental concern 6.16  
designated under 15 NCAC 7H;
- (iii) other hazardous or fragile land areas, 6.17  
including but not limited to freshwater 6.18  
swamps and marshes, maritime forests,

	cultural and historic resources, and manmade hazards. This discussion may be in terms of the nomination procedure for areas of environmental concern under Section .0500 of 15 NCAC 7H; this discussion should also include local policy development to protect those fragile areas which are not covered by existing regulations and these policies can also be reflected in land classification and local ordinance;	6.19 6.20 6.21 6.22
(iv)	hurricane and flood evacuation needs and plans, as specified in Rule .0203(a)(6) of this Section;	6.24
(v)	protection of potable water supply;	6.26
(vi)	the use of package treatment plants for sewage treatment disposal can also be listed under economic and community development policies;	6.28 6.29
(vii)	stormwater runoff associated with agriculture, residential development, phosphate or peat mining and their impacts on coastal wetlands, surface waters or other fragile areas;	6.30 6.31 6.32
(viii)	marina and floating home development;	6.34
(ix)	industrial impacts on fragile areas; and	6.35
(x)	development of sound and estuarine system islands.	6.38
(2)	Resource Production and Management:	6.40
(A)	Local governments shall discuss the importance of agriculture, forestry, mining, fisheries and recreational resources to the community. The most productive areas shall be identified and values of protecting these productive areas shall also be discussed.	6.42 6.43 6.44 6.45
(B)	As a minimum, the plan shall contain policy statements on the following resource production and management issues (if relevant):	6.46 6.47
(i)	productive agricultural lands;	6.49
(ii)	commercial forest lands;	6.50
(iii)	existing and potential mineral production areas;	6.52 6.53
(iv)	commercial and recreational fisheries; including nursery and habitat areas;	6.54 6.55
(v)	off-road vehicles; and	6.57
(vi)	residential and commercial land development, peat or phosphate mining and industrial impacts on any resource.	7.2 7.3

- (3) Economic and Community Development: 7.4
- (A) Local governments shall discuss the types of development which are to be encouraged. In this instance, the term "development" shall include residential, commercial, industrial and institutional development. The plan shall consider the costs and benefits of redevelopment of older areas as well as the creation of new subdivisions or industrial parks. In addition, the capacity of existing facilities (land, utilities, transportation, etc.) to service new developments and the potential for establishing new public support facilities (including costs and financing methods) shall be discussed. 7.6  
7.7  
7.8  
7.9  
7.10  
7.11  
7.12  
7.13
- (B) As a minimum, the plan shall contain policy statements on the following economic and community development issues (if relevant): 7.14  
7.15
- (i) types and locations of industries desired (including discussion of specific sites or standards for sites in general); 7.17  
7.18
- (ii) local commitment to providing services to development; 7.19  
7.20
- (iii) types of urban growth patterns desired (including policy regarding development away from existing urban clusters); 7.21  
7.22
- (iv) redevelopment of developed areas; 7.23
- (v) commitment to state and federal programs in areas (including erosion control, public access, highway improvements, port facilities, dredging, military facilities, etc.); 7.25  
7.26  
7.27
- (vi) assistance to channel maintenance and beach nourishment projects (including financial aid, provision of borrow and spoil areas, provision of easements for work); 7.28  
7.29  
7.30
- (vii) energy facility siting and development; 7.32
- (viii) tourism and beach and waterfront access; 7.33
- (ix) coastal and estuarine water beach access (which could include urban waterfront access). Policies on type and location should be based on an inventory of all publicly owned properties, to include street ends, appropriate for access development, all privately owned parcels appropriate for access development, privately owned parcels and where access occurs customarily. These access areas shall provide for the diverse 7.35  
7.36  
7.37  
7.38  
7.39

- needs of the permanent and peak seasonal populations as well as day visitors;
- (x) types, densities, location; units per acre etc. of anticipated residential development and services necessary to support such development. 7.41
  - (C) In addition to specific policy statements on issues listed in this Paragraph, local governments should pay particular attention in policy development to observed land use trends such as: 7.43  
in inland areas significant changes from lower intensity to higher intensity uses, agricultural and forest uses to residential or commercial, or 7.44  
from forest to agricultural. Land use trends in estuarine, river and sound areas include residential waterfront development and increases 7.46  
in density of waterfront residential uses; marina development and expansion, floating homes and 7.47  
public and private services provided to support higher intensity uses. Oceanfront and barrier islands should address the adequacy of existing 7.48  
and planned transportation routes, bridges, water and sewer systems, and other carrying capacity features and local ordinances to accommodate 7.49  
expected and potential changes in land use intensities and overall growth. 7.50  
7.51  
7.52
  - (4) Continuing Public Participation. Local governments shall discuss the means by which public involvement in planning matters will be encouraged. The public involvement policies shall be consistent with the concepts set forth in .0207 of this Section. As a minimum, the plan shall address the following public participation issues: 7.54  
7.55  
7.56  
7.57
    - (i) description of means to be used for public education on planning issues, and 8.1  
8.2
    - (ii) description of means to be used for continuing public participation in planning. 8.3  
8.4
  - (5) The Coastal Resources Commission in consultation with the local governments, may specify other specific issues that must be addressed in particular local land use plans. 8.6  
8.7
  - (6) Storm Hazard Mitigation, Post-Disaster Recovery and Evacuation Plans: 8.8  
8.9
    - (A) Storm Hazard Mitigation policies which include the following elements are required as part of the land use plan: 8.12

- (i) A composite hazards map and brief narrative description of hazardous areas located within the planning jurisdiction including all AEC'S, flood zones, and other hazard areas of importance. The map and description shall be prepared in accordance with the principles outlined in "Before the Storm: Managing Development to Reduce Hurricane Damages"; McElyea, Brower and Godschalk, 1982.
  - 8.14
  - 8.15
  - 8.16
  - 8.17
  - 8.18
- (ii) An inventory and analysis of the existing uses of the land and structures in hazard areas shall be completed. The intent of this inventory is to put into perspective the level of existing development within hazardous areas. It is designed to portray for local governments what portion of their population, housing, commercial establishments, tax base, etc. may be subject to damage as a result of being within a hazardous area.
  - 8.20
  - 8.21
  - 8.22
  - 8.23
- (iii) A description of the relative severity and type of risk or risks and an indication of the monetary value of the losses that might be sustained in each of the hazard areas.
  - 8.25
  - 8.26
  - 8.27
  - 8.28
- (iv) Hazard Mitigation policies which apply to all hazard areas, including both public and private facilities. In developing these policies, local government should consider the following:
  - (I) separate policies which deal with the effects of high winds, flooding, wave action and erosion for those hazard areas where such forces may be expected;
    - 8.34
    - 8.35
  - (II) means of dealing with structures and uses which do not conform to the hazard mitigation policies;
    - 8.36
    - 8.37
  - (III) means of encouraging hotels, restaurants, and similar large commercial structures to locate outside of erosion-prone areas.
    - 8.38
    - 8.39
  - (IV) policies which deal with the acquisition of parcels located in hazard areas or rendered unbuildable, for the purpose of public access.
    - 8.40
    - 8.41



APPENDIX C

COMMUNITY SERVICE WORK PROGRAM CONTACTS

Ms. Jan Blake, Community Service Specialist  
Department of Crime Control and Public Safety  
Division of Victim and Justice Services  
Raleigh, NC  
(919) 733-7974

<u>COUNTIES</u>	<u>NAME AND ADDRESS</u>	<u>PHONE NUMBERS</u>
Camden, Chowan, Currituck Dare, Gates, Pasquotank, Perquimans	Betty R. Heath - Coord. Barbara A. Woods - Coord. Linda Phillips - Asst. Coord. P. O. Box 276 Elizabeth City, NC 27909	(919) 338-8224
Beaufort	R. Lavern Mayo - Coord. 1st. Floor Beaufort County Courthouse Washington, NC 27889	(919) 975-2717
Hyde, Tyrrell, Washington	Michael E. Bryant - Coord. Main Street Martin County Courthouse Williamston, NC 27893	(919) 792-1520
	David Peel - Asst. Coord. 2nd Floor Washington County Courthouse Plymouth, NC 27962	(919) 793-9058
Craven	Tami Kernen - Coord. Debra H. Adams - Asst. Coord. P. O. Box 605 Greenville, NC 27834	(919) 752-7338
Carteret, Pamlico	Sharon L. Cox - Coord. Route 1, 107 Safrit Drive Beaufort, NC 28516	(919) 728-6657
Bertie, Hertford	Robert L. Holloman - Prg. Mng. Carolyn Moore - Sec. P. O. Box 145 Winton, NC 27986	(919) 358-8261

Mr. Howard Davis, Community Service Specialist  
Department of Crime Control and Public Safety  
Division of Victim and Justice Services  
Raleigh, NC 27611  
(919) 733-7974

<u>COUNTIES</u>	<u>NAME AND ADDRESS</u>	<u>PHONE NUMBER</u>
Onslow	Marilyn Padgett - Coord. Jacqueline K. Ames - Asst. Coord. 39 Tallman Street Jacksonville, NC 28540	(919) 455-2931
New Hanover, Pender	Kathy K. Campbell - Coord. Yvonne Grant - Coord. 414 Chestnut Street Suite 301 Wilmington, NC 28401	(919) 341-7159
Brunswick	Mary (Libby) Phelps - Coord. P. O. Box 249 Brunswick County Courthouse Bolivia, NC 28422	(919) 253-6775

## APPENDIX D

### TAX CREDITS FOR DONATED PROPERTIES

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1983  
RATIFIED BILL

CHAPTER 793  
HOUSE BILL 230

AN ACT TO PROVIDE AN INCOME TAX CREDIT FOR CERTAIN REAL PROPERTIES DONATED FOR CONSERVATION PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Division I of Article 4 of Chapter 105 is amended by adding a new section to read:

"§ 105-130.34. Credit for certain real property donations.--  
(a) Any corporation that makes a qualified donation of interest in real property located in North Carolina during the taxable year that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes, shall be allowed a credit against the taxes imposed by this Division equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated to and accepted by either the State, local government or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions pursuant to G.S. 105-130.9; provided, however, that lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under such regulations or ordinances shall not be eligible for this credit. The credit allowed under this section may not exceed five thousand dollars (\$5,000). To support the credit allowed by this section, the taxpayer shall file with its income tax return for the taxable year in which the credit is claimed, a certification by the Department of Natural Resources and Community Development that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer.

(c) Any unused portion of this credit may be carried forward for the next succeeding five years.

(d) The fair market value, or any portion thereof, of a qualifying donation that is not eligible for a credit pursuant to this section may be considered as a charitable contribution pursuant to G.S. 105-130.9. That portion of the donation allowed as a credit pursuant to this section shall not be eligible as a charitable contribution."

Sec. 2. G.S. 105-130.9 is amended to add a new subsection to read:

"(4) That portion of a contribution that is claimed as a tax credit pursuant to G.S. 105-130.34 shall not be eligible for a deduction pursuant to this section."

Sec. 3. Division II Article 4 of Chapter 105 is amended by adding a new section to read:

"§ 105-151.12. Credit for certain real property donations.—

(a) Any person that makes a qualified donation of interests in real property located in North Carolina during the taxable year that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes, shall be allowed a credit against the taxes imposed by this Division equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated to and accepted by either the State, local government or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions pursuant to G.S. 105-147(15) or (16); provided, however, that lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under such regulations or ordinances shall not be eligible for this credit. The credit allowed under this section may not exceed five thousand dollars (\$5,000). To support the credit allowed by this section, the taxpayer shall file with the income tax return for the taxable year in which the credit is claimed, a certification by the Department of Natural Resources and Community Development that the property donated is suitable for one or more of the valid public benefits set forth by this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer.

(c) Any unused portion of this credit may be carried forward for the next succeeding five years.

(d) The fair market value, or any portion thereof, of a qualifying donation that is not eligible for a credit pursuant to this section may be considered as a charitable contribution pursuant to G.S. 105-147(15) or (16). That portion of the donation allowed as a credit pursuant to this section shall not be eligible as a charitable contribution.

(e) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form. Where only one spouse is required to file a North Carolina income tax return, such spouse may claim the credit allowed by this section."

Sec. 4. G.S. 105-147(15) and G.S. 105-147(16) are amended by adding a sentence at the end thereof to read:

"That portion of a contribution that is claimed as a tax credit pursuant to G.S. 105-151.12 shall not be eligible for a deduction pursuant to this subsection."

Sec. 5. This act is effective for taxable years beginning on and after January 1, 1983.

In the General Assembly read three times and ratified, this the 18th day of July, 1983.

JAMES C. GREEN

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James C. Green  
President of the Senate

LISTON B. RAMSEY

---

Liston B. Ramsey  
Speaker of the House of Representatives

15 NCAC 1G - TAX CREDIT CERTIFICATION OF REAL PROPERTIES DONATED  
FOR CONSERVATION PURPOSES

.0001 PURPOSE AND SCOPE

The regulations in this Subchapter establish procedures for the certification of conservation value and public benefit of property to be donated to the State, local governments, or qualified environmental organizations for tax credit purposes. The North Carolina Department of Natural Resources and Community Development (Department) shall be the certifying agency by:

- (1) determining that property proposed for donation has conservation value and public benefit; and
- (2) providing an official certification form to the donor for offered properties giving recognition that they are qualified for a tax credit.

History Note: Statutory Authority G.S. 105-151.12(a);  
105-130.34;  
Effective

.0002 DEFINITIONS

For the purpose of this Subchapter:

- (1) "Conservation Value" means potential for the preservation, enhancement, and appropriate conservation use of the State's natural resources.
- (2) "Donated Property" means interest in real property located in North Carolina contributed to the state, local government, or qualified environmental organization for conservation and which provides a perpetual public benefit.
- (3) "Public Benefit" means public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes.
- (4) "Qualified Environmental Organization" means a group of individuals that is chartered for the preservation and conservation of the environment and natural resources in the state. The group must be organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions.
- (5) "Recipient" means a unit of State or local government, or a qualified environmental organization that receives property of conservation value for its perpetual public benefit.
- (6) "Donor" means a North Carolina tax payer who contributes property of conservation value and receives a tax credit for his contribution.
- (7) "Certification" means an approval from the Department that a proposed donation is suitable and will continue to fulfill stated conservation purposes.

History Note: Statutory Authority G.S. 105-151.12(a);  
105.130.9; 105-147(15); 105-147(16);



## Effective

### .0003 PARTICIPATING DIVISIONS

Department Divisions that have the greatest expertise in determining that a proposed donation has conservation value shall conduct certification investigations and may travel to the property and making site evaluations. Agencies outside NRCD may be asked to assist in such evaluations when they possess needed expertise that is not otherwise available. Depending upon the complexity of the area or the number of conservation values under consideration, one or more of the designated Divisions or agencies will conduct the investigation. The designated Divisions and their respective areas of concern are as follows:

- (1) Division of Environmental Management - Stream Watch, and 201/greenways;
- (2) Division of Forest Resources - Forestry;
- (3) Division of Land Resources - mining, reclamation, unique geologic areas, dams, and erosion control;
- (4) Division of Marine Fisheries - wetlands, and coastal waters;
- (5) Division of Parks and Recreation - parks, trails, rivers, natural areas and rare species habitats, and open space;
- (6) Division of Soil and Water Conservation - multiple use watershed projects;
- (7) Office of Coastal Management - shorefront and beach access, wetlands, dune lands, and estuarine sanctuaries;
- (8) Office of Legal Affairs - review of attorney's certificate of title, and qualification of recipients;
- (9) Office of Water Resources - civil works projects, water-based recreation facilities, and mitigation; and
- (10) Wildlife Resources - terrestrial and aquatic habitat protection, and boating and hunting access.

These and other Divisions may be consulted on areas of concern as appropriate given the unique characteristics of a proposed donation.

History Note: Statutory Authority G.S. 105-130.34;  
105-151.12;  
Effective

### .0004 APPLICATION: CERTIFICATION

(a) An application for certifying conservation-valued property for tax credit may be obtained by writing or calling the Assistant Secretary of Natural Resources, North Carolina Department of Natural Resources and Community Development, Post Office Box 27687, Raleigh, North Carolina 27611 (919)733-4984. The potential donor will then submit the completed application to the Assistant Secretary with those attachments necessary to provide sufficient information and allow for review and site investigation.

(b) The Assistant Secretary will circulate the completed application to the appropriate divisions in the Department and other agencies for certification evaluation and recommendations.

(c) If the property can be certified as having conservation value, then the Assistant Secretary shall send the applicant a

completed tax credit certificate including notice of any conditions that must be met to fulfill the requirements of the enabling statute and related laws before the certification becomes valid. If the property cannot be certified for a tax credit, the Assistant Secretary shall notify the applicant of the reasons.

History Note: Statutory Authority G.S. 105-130.34;  
105-130.9; 105-151.12;  
Effective

.0005 TIMING

(a) The Assistant Secretary will consider all recommendations and will make every effort to reach a final decision to certify or deny certification of property for tax credit purposes within 60 days from receipt of the completed application. In a case where the number of applications exceeds the Department's ability to reach expeditious decisions, the applicants shall be notified of potential delays.

(b) When seeking certification prior to donation, the application for certification must be submitted to the Assistant Secretary four months prior to the close of the donors tax year to assure time for certification and donation.

(c) When seeking certification after donation, the application for certification must be submitted to the Assistant Secretary no later than the close of the donors tax year to assure time for certification to be applied to that tax year.

History Note: Statutory Authority G.S. 105-130.34;  
105-130.9; 105-151.12;  
Effective

.0006 RECONSIDERATION OF APPLICATION

(a) If the Assistant Secretary does not certify the property, the applicant may request a reconsideration meeting where additional evidence of the property's conservation value and public benefit may be presented.

(b) Such request for a reconsideration meeting shall be made to the Assistant Secretary in writing, no later than twenty days after notification that the certification has not be made.

(c) A request for reconsideration under this Rule shall not be considered a contested case under G.S. 150A-2(2).

History Note: Statutory Authority G.S. 105-130.34;  
105-130.9; 105-151.12;  
Effective

APPLICATION FOR TAX CREDIT CERTIFICATION

Section 1 - APPLICATION (for donors tax year ending \_\_\_\_\_, 19\_\_)

Name of Donor (include names of all owners of interest and their tax identification numbers) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Phone (daytime) \_\_\_\_\_

Name, Address, and daytime phone number of Contact person if multiple owners or if different from Donor: \_\_\_\_\_  
\_\_\_\_\_

Location of Property to be donated (include copy of deed, note name and number of roads upon which property has frontage or access, locational maps, and site maps): \_\_\_\_\_  
\_\_\_\_\_

Description of the Property to be donated (include acreage, current useage, vegetation cover): \_\_\_\_\_  
\_\_\_\_\_

List all liens and easements of record or other encumbrances (include deed book references and description, or copies of documents): \_\_\_\_\_  
\_\_\_\_\_

Proposed Future Use or Purpose of Donated Property: \_\_\_\_\_  
\_\_\_\_\_

Type of Interest to be donated and any restrictures or reservations contained in deed to donee: \_\_\_\_\_  
\_\_\_\_\_

Proposed Recipient (including name and telephone number of recipient contact if property has already been offered or accepted): \_\_\_\_\_  
\_\_\_\_\_

Status of donation (please check):

- ☐ Donation has been completed with transfer to recipient
- ☐ Acceptance approved by recipient but awaiting transfer
- ☐ Donation offered and awaiting decision by recipient
- ☐ Donation has not been offered to any recipient
- ☐ Other (explain) \_\_\_\_\_  
\_\_\_\_\_

Attach copies of:

- (1) copy of charter of donee; if not a local government unit or State of North Carolina
- (2) certificate of title by attorney

Value of Property proposed for donation is estimated to be \$ \_\_\_\_\_.  
(Note: This does not have to be an appraised value and is for administrative use only; it has no effect on the final appraised value for charitable contribution or tax credit.)

I affirm that the property proposed for donation is not required to be dedicated pursuant to local government regulation or ordinance, or dedicated to increase building density levels under such regulations or ordinances.

Further, I authorize officers/employees/agents of the North Carolina Department of Natural Resources and Community Development to enter my property to conduct on-site investigations for the purpose of determining tax credit eligibility. I agree to provide additional documentation requested by the Department of Natural Resources and Community Development.

SIGNATURE OF DONOR OR INDIVIDUAL WITH  
POWER OF ATTORNEY FOR OTHER OWNERS OF  
INTEREST

DATE

SIGNATURE OF OTHER OWNERS OF INTEREST  
WHERE NO ONE HAS POWER OF ATTORNEY

DATE

Tax consequences of donating real property to the state with a view to the special problems of those taxpayers making donations because of CAMA regulations.

1. Is it deductible?

The first hurdle a taxpayer must overcome in taking a charitable deduction involves the issue of whether or not the recipient of his gift is a proper subject. Due to the plain language of §170 (c)(1) of the Internal Revenue Code, the state agent who is soliciting a gift of land for the beach access program can safely say, "It's deductible." The amount of the deduction is, however, a more complicated issue.

2. Amount of deduction?

If the property is a capital asset and has been in the owner's hands for a year or longer, the deduction is equal to the fair market value of the property. If the property has been held for less than a year, the deduction can be no more than the owner's basis in the property; which, in the case of unimproved land, is the amount he paid for it. If the property was a gift to the owner from a living donor, the owner takes the donor's basis. If it was a bequest, the owner's basis is the fair market value of the land at the time of the death of the previous owner. The possibility that the land may not be a capital asset arises if the owner is in the business of buying and selling land. In that case, the result is a deduction of no more than basis only even if the holding period exceeded one year.

3. What is fair market value?

Fair market value is defined in the Code as the price at which the property would change hands between a willing buyer and a willing seller when neither is under any compulsion to act and when both have knowledge of the relevant facts. Revenue Procedure 66-49 speaks directly to the issue of valuation and should be examined by the taxpayer considering a charitable deduction. Revenue Procedure 66-49 gives the following advice on how fair market value is to be determined.

"As to the measure of proof in determining the fair market value, all factors bearing on value are relevant . . ."

If a beach lot has been zoned so that nothing can be built upon it, it is difficult to imagine a credible argument supporting the position that this fact should not be considered in determining fair market value. Thus, if the taxpayer valued his unbuildable donated property at the rate applied to buildable oceanfront property, the valuation would certainly be open to an IRS attack.

4. Could a sale to the state produce a better tax result than an outright gift?

This option should be considered when the property has suffered a substantial decrease in value. An example would be the oceanfront lot purchased

for \$50,000 that is now virtually worthless because of beach erosion, ocean setback laws, or a combination of these two factors. If this lot was sold for its current market value of \$1,000, the owner would suffer a capital loss of \$49,000, which is a considerably better tax write-off than a \$1,000 charitable deduction. After being applied to offset any capital gain, this loss can be used to shelter ordinary income in the amount of \$3,000 per year until the loss is used up. (If the loss is long term, it takes \$6,000 of loss to shelter \$3,000 of ordinary income. Short term loss can be applied on a dollar to dollar basis.) The potential donor who decides to sell instead should take two precautions to make sure the transaction is locked in as a sale. First, the price should approximate fair market value. The transaction should not look like a sham. Second, the owner should not make a gift of the price paid for the land to the state. Such generosity could cause the IRS to combine the two transactions into one result: a gift of land to the state entitled to a charitable deduction only.

5. What is the effect of a bargain sale to the state?

A bargain sale would occur when property is sold to the state for less than its fair market value. This transaction is treated as part sale and part contribution. It could be quite useful when the potential donor wishes to make a contribution of less than the land's total value. In the case of real property, the charitable deduction is equal to the difference between the price received and the fair market value. In the case of appreciated property, the basis of the property must be reduced by the same ratio as that of the fair market value to the selling price when computing the capital gain.

Conclusion and caveats

In conclusion, the potential donee should make sure he has a credible appraisal of the value of the gift. In the case of appreciated property, a straight charitable contribution is the best way to make the gift, but it should be remembered that the amount of the charitable deduction can be no more than 50% of the taxpayer's adjusted gross income. The excess can be carried over for five years, however. If the property has depreciated, sale to the state at fair market value may produce a better tax result. This analysis applies to vacant, unimproved land. Commercial property, land subject to depreciation allowances, and property that has been improved bring up more complicated considerations.

APPENDIX E

MODEL LAND DEVELOPMENT

## MODEL LAND DEVELOPMENT REGULATIONS

ARTICLE 1. PURPOSE. The purpose of this Ordinance is to set forth certain regulations pertaining to land development within the Town, which regulations shall be in addition to all other applicable building, subdivision, zoning and other regulations established by Town Ordinance. This Ordinance shall apply to, and be enforced in, all areas of the Town, and no person shall develop land anywhere in the Town except in conformity with this Ordinance and other applicable regulations of the Code of Ordinances and amendments thereto.

### ARTICLE 2. PUBLIC ACCESS DEDICATION.

Section 1. Purpose. This Ordinance is enacted to insure that future land development within the Town provides for public access to the Atlantic Ocean and the Sound. This Ordinance may be cited as the "Public Access Ordinance" of the Town of Sandy Shores, North Carolina.

Section 2. Definitions. For the purpose of this section:

- a) "Developer" shall mean any person undertaking any development as defined in this section.
- b) "Development" shall mean any subdivision, whether or not the recording of a plat is required; any horizontal condominium; and any multiple dwelling unit residential building, including, but not limited to, apartments, condominiums, hotels, motels, special planned developments, planned unit development, and group development projects. Development shall also mean any commercial or industrial building or structure. The term shall, when appropriate to the context, include the act of establishing or creating any of the foregoing or the result of such activity.
- c) "Public Accessway" shall mean a piece of land transferred to public use for access to the Atlantic Ocean or Sound. Public accessways may be dedicated by right-of-way, perpetual easement, or fee simple title transfer.

Section 3. Requirements. As a condition of development, the developer shall dedicate land, pay a fee in lieu thereof, or combination of both, at the option of the Town Board of Commissioners, for public access at the time and according to the standards and formula in this section.

### Section 4. General Standard, Formula.

- a) It is hereby found and determined that the public interest, convenience, health, welfare and safety require that public access to the Atlantic Ocean and the Sound be provided at the regular interval of 500 feet.
- b) Formula for dedication of land: To determine the number of public accessways to be dedicated with the general standard of one public accessway per five hundred (500) lineal feet of shoreline, the following formula shall be use:



$$\begin{array}{rcl} \text{Lineal feet} & \div & 500 \\ \text{of shoreline} & & = \text{Number of accessways} \end{array}$$

The number of lineal feet of shoreline for any proposed development shall be measured along the mean high water line.

- c) Fractions of public accessways shall be converted for fee payment, as provided by formula herein.

Section 5. Formula for Fees in Lieu of Public Accessway Dedication. If it is determined that no public accessway is to be located in whole or part within the proposed development to serve immediate or future needs of the residents, the developer shall, in lieu of dedication, pay a fee. This fee shall be equal to the value of the land acreage and required improvements as determined herein for dedication.

Section 6. Use of Money. The monies collected hereunder shall be placed in a reserve account within the general fund which shall be known as the Reserve for Public Accessways. Monies within the reserve account shall be used and expended solely for the acquisition, improvement, expansion or implementation of public accessways. Said monies, as they relate to fees paid for any given development, shall be used first for the purpose of providing public accessways reasonably related to serving said development by way of the purchase of necessary land and improvements; or if adequate public access exists in the area, the monies may be spent to acquire or improve public access as needed at any location in the Town.

Section 7. Amount of Fee in Lieu of Public Accessway Dedication. Where a fee is required to be paid in lieu of public accessway dedication, the amount shall be based upon the fair market value of the amount of land and improvements which would otherwise be required to be dedicated. The Town Appraiser shall determine the fair market value of the land in the proposed development, and this determination shall be used in calculating the fee to be paid. If a developer objects to the fair market value determination, he may, at his own expense, obtain an appraisal by a qualified real estate appraiser approved by the Town, which appraisal of fair market value may be accepted by the Town Board of Commissioners. Alternatively, the Town and the developer may agree as to the fair market value.

Section 8. Determination of Land or Fee. The Town Board of Commissioners shall determine whether to accept public accessway dedication, require payment of a fee in lieu thereof, or combination of both, after consideration of the following:

- a) Topography, geology, access and location of land in the development available for dedication;
- b) Location relative to residential population concentration;
- c) Size and shape of the development and land available for dedication;
- d) The feasibility of dedication;
- e) Availability and proximity of previously acquired public accessways;
- f) Consistency with the Land Use Plan.

Section 9. Credit for Private Accessways. Where private accessways are provided in a proposed development and such space is to be privately owned and maintained by the future residents of the development, credit may be given against the requirement of public accessway dedication or payment of fees in lieu thereof. The Town Board of Commissioners must find it is in the public interest to do so and that all of the following standards are met:

- a) The private ownership and maintenance of the accessway is adequately provided for by recorded written agreement, conveyance or restrictions;
- b) The perpetual use of the private accessway shall be restricted for accessway purposes by recorded covenant, which runs with the land in favor of the future owners of property and which cannot be deleted or eliminated without the consent of the Town or its successor;
- c) The proposed private accessway is reasonably adaptable for use for public and accessway purposes, taking into consideration such factors as size, shape, topography, geology, access and location;
- d) Facilities proposed for the private accessway are in substantial accordance with the provisions of this ordinance; and
- e) The accessway for which credit is given meets accessway needs of all existing and future residents of the area.

Section 10. Procedure.

- a) In the case of a subdivision for which a plat is required to be recorded, as a condition of preliminary plat approval, the developer shall agree in writing to dedicate public access, pay a fee in lieu thereof, or combination of both, at the option of the Town, according to the standards and formula in this section. A recommendation from the Planning Board shall be forwarded to the Town Board of Commissioners.

At the time of approval of the preliminary subdivision plat, the Town shall determine the number of public accessways to be dedicated or fees to be paid by the developer.

At the time of filing of the final subdivision plat, the developer shall dedicate the public accessways, pay the fees as previously determined by the Town Board of Commissioners, or furnish a bond in the amount of one hundred ten (110) percent of the fees which shall become a lien upon the property and shall be paid upon issuance of the first certificate of occupancy or the transfer of title to any parcel or unit of the land or improvements thereto.

- b) In the case of a development for which a plat is not required to be recorded, the developer shall dedicate public accessways, pay a fee in lieu thereof, or combination of both, prior to the issuance of a building permit. The determination of public accessway dedication, fee payment in lieu thereof, or combination of both, shall be made by the Town Board of Commissioners after consideration of the recommendation of the Planning Board. A bond may be furnished, in lieu of

fee, in the amount of one hundred ten (110) percent of the fee, which shall be paid upon the issuance of the first certificate of occupancy or the transfer of title to any parcel or unit of the land or improvements thereto, as described in paragraph a) of this section.

Section 11. Public Accessway Character and Development.

- a) Where a public accessway is required, it shall be at least fifty (50) feet wide. When in the opinion of the Town Board of Commissioners it is desirable, two or more required public accessways may be placed side by side.

The length of the public accessway shall be as long as necessary to run from the public intertidal zone to the nearest improved public street right-of-way.

The location of the public accessway shall be at the discretion of the Town Board of Commissioners with consideration of the following:

- 1) The impact on the layout of the proposed development;
  - 2) The length necessary to accomplish the purposes of this ordinance;
  - 3) The preservation of unique or valuable natural or historic features; and
  - 4) The need for access at regular intervals for public safety purposes.
- b) Where a public accessway is required, it shall be developed with the following:
- 1) Stabilized, hard-surfaced parking spaces, access aisle, and turn-around for as many vehicles as practical between the nearest improved right-of-way and the land side of the primary dune.
  - 2) A trash receptacle, freshwater shower/drinking fountain, planting strips, changing enclosure and rest room and directional signs indicating public beach/sound access.
  - 3) A raised walkway structure across the primary dune. Said walkway shall be designed according to accepted practices to minimize pedestrian impact on sensitive dune elements.
  - 4) Other reasonable improvements as determined appropriate and in the public interest by the Board of Commissioners.

## LIST OF REFERENCES

Brower, David J., et al. 1978. Access to the Nation's Beaches: Legal and Planning Perspectives. Raleigh: UNC Sea Grant.

This book reviews laws affecting ownership and use of coastal beaches with particular attention given to North Carolina. In addition, issues related to beach access planning and legal tools for preserving, perfecting and acquiring beach access are presented.

Ducker, Richard. 1982. Dedicating and Reserving Land to Provide Access to North Carolina Beaches. Chapel Hill: UNC Institute of Government.

This book presents a very detailed review of the legal means by which municipal and county governments can pursue access dedication. A careful review of the legal principles is presented as well as examples of their application in North Carolina.

Graetz, Karl E. 1973. Seacoast Plants of the Carolinas. Raleigh: UNC Sea Grant.

This book reviews coastal environmental factors affecting plant growth and survival. In addition, it cites types of vegetation suitable for use on barrier islands and detailed installation instructions.

Hammond, Henry C. 1984. Pedestrian Beach Access Crosswalks for Onslow County Parks and Recreation Department. Raleigh: By the Author.

This report critiques three types of dune crossovers currently in use in North Carolina and makes recommendations regarding the best type of dune crossover to construct. Detailed construction drawings and material specifications are presented.

Mace, Ronald L. and Laslett, Betsy, eds. 1977. An Illustrated Handbook of the Handicapped Section of the North Carolina State Building Code. Raleigh: North Carolina Department of Insurance.

This handbook presents minimum design requirements to make new and remodeled structures usable and accessible to handicapped individuals. In addition to code requirements, preferred alternative solutions are also cited. This handbook is particularly helpful for required beach access ramp and restroom design features.

Recreation and Park Consultants, Inc. 1979. Ocean and Estuarine Recreation Access. Raleigh: By the Author.

This report was prepared for Carteret County to assist county officials in planning and providing for future public access opportunities. Much discussion is devoted to the development of standards for publicly owned and/or operated water access areas or waterfront parks (p. 67). The report is prepared with an eye for detail and analysis and provides a valuable inventory of material upon which to base access project decisions.

Roe, Charles E. 1984. The Landowner's Options for Natural Heritage Protection (Draft). Raleigh: North Carolina Natural Heritage Program.

This booklet is a guide to land protection techniques available in North Carolina. It reviews land donations, sales and easements and presents detailed information regarding tax benefits and deductions.

Seltz, Johanna. 1976. The Dune Book. Raleigh: UNC Sea Grant.

This short pamphlet discusses the natural resource value of dune preservation and techniques to use in dune restoration. Vegetation types and planting instructions are also cited.

COASTAL MANAGEMENT OFFICES

Division of Coastal Management  
North Carolina Department of Natural Resources  
and Community Development  
P.O. Box 27687  
Raleigh, NC 27611-7687  
919/733-2293

Southern

Coastal Management Field Services  
North Carolina Department of Natural Resources  
and Community Development  
7225 Wrightsville Avenue  
Wilmington, NC 28403  
919/256-4161

Central

Coastal Management Field Services  
North Carolina Department of Natural Resources  
and Community Development  
P.O. Box 769  
Morehead City, NC 28557  
919/726-7021

Northern

Coastal Management Field Services  
North Carolina Department of Natural Resources  
and Community Development  
1502 N. Market Street  
P.O. Box 1507  
Washington, NC 27889  
919/946-6481

Northeastern

Coastal Management Field Services  
North Carolina Department of Natural Resources  
and Community Development  
108 S. Water Street  
Elizabeth City, NC 27909  
919/338-1558

